

“AS-3”

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03. July 2017

Advisory Opinion

to the S133 Specialist Report from Sue Lightfoot,

Schmidt & Hopfengärtner dated 15. June 2017,

regarding the child

Clara Larissa Schmidt (DOB. 03. July 2007),

FAM-2017-079-000008

The signatory does not deem it necessary to respond to every statement made by the report writer. Not responding, however, should not be taken as an indication that the signatory agrees with what is stated. The signatory intends to respond only to those matters which are of particular significance.

A. Content Review

I. Brief and questions

The following questions should be answered:

1.

Having regard to the child's objection to return,

- *What is the basis for that objection?*
- *Does it appear as if the objection is reality based, and/or affected by undue influence, and/or able to be addressed by explanation or intervention?*

- *Does the child have sufficient maturity and understanding to recognize the implication of the objection?*

2.

Having regard to the defence that the child might be exposed to grave risk of physical or psychological harm, or otherwise placed in an intolerable situation (and having regards to the factual basis set out by the parent in support of the objection),

- *What is any would be the psychological impact on the child of an Order of Return to Germany?*
- *If the Court does order child's return to Germany, what steps may be taken or interventions put in place, to ameliorate any negative psychological impact for the child?*

3.

Noting the child's age cognitive ability and maturity, comment on the child's likely ability to accommodate her relocation back to Germany.

II. Content evaluation

3. Timeline

In the timeline relevant data were missed:

2014

- 27.11.2014, Arrest Warrant Simon Hopfengärtner, District Court Fürth, Germany, Az. 461 Cs 703 Js 74456/13 (grievous bodily harm 'car incident' 20.09.2013)

2015

- 20.03.2015, Order of Punishment Lisa Hopfengärtner, Public Prosecutor Nuremberg-Fürth, Az.: 651 Js 44045/14 (withdraw of a Person in Germany)

2016

- 21.05.2016, European Warrant of Arrest Lisa Hopfengärtner, Public Prosecutor Nuremberg-Fürth, Az.: 953 Js 161135/15 (Unfaithfulness Assets)

All these procedures - the arrest warrant for Clara's stepfather for violence with a weapon against Clara's father 'car incident' (20.09.2013) and the order of punishment for Clara's mother for abduction of a child in Germany (20.03.2015) are relevant for the assessment but were not considered in the whole report by the report writer.

In the timeline data were interchanged:

2015

- 30.05.2015 Decision of sole custody to Mr Schmidt upheld: this was 30.05.2016

5. Mr Axel Schmidt

The report writer stated:

"I have not had the opportunity to interview Mr Schmidt for the purposes of this report (section 2.2). I did email Mr Schmidt's Solicitor Mr Roots, and offer the opportunity for Mr Schmidt to be interviewed in NZ, or state his position by email if he wished" (page 4, expert report Sue Lightfoot, 15.06.2017).

This statement of the report writer does not correspond with the facts.

As direct reply to the email of the report writer to the solicitor Mr. Roots the signatory sent an email to the report writer dated 25.05.2017 and announced:

*"6.
I will be available for you for personal contact in New Zealand"*.

The report writer did not contact the signatory.

The report writer contacted Clara's mother Mrs Lisa Hopfengärtner personally and by phone five times. Mr Simon Hopfengärtner was contacted by the report writer one time personally.

The signatory had no right to be heard.

7. Having regard to the child's objection to return,

- What is the basis for that objection?
- Does it appear as if the objection is reality based, and/or affected by undue influence?
- Does it appear as if the objection able to be addressed by explanation or intervention?
- Does the child have sufficient maturity and understanding to recognize the implication of the objection?

What is the basis of that objection?

7.2 Conclusion

a)

The report writer stated: *"Clara's objections to returning to Germany were consistent when expressed to myself, to Lawyer for Child, or to others in her community. Clara stated (1) that she believed she would lose her relationship with her mother, and her mother is the person most important to her, (2) that she would lose her life in NZ, including the rest of her family, her friends, and her lifestyle, and (3) that she did not want to see her father yet"* (page 6, expert report Sue Lightfoot, 15.06.2017).

Clara's decision not to return to Germany is reasonable because her perception is based on the conditions *"lose her relationship with her mother"* and *"her mother is the person most important to her"*.

Clara was told by her mother and by others (e.g. Dean Blair, lawyer of the child) that she would not see her mother again if she would return to Germany. For that reason Clara believed that after the loss of her father also the loss of her mother could be a realistic scenario.

The report writer stated: *"Ms Hopfengaertner has indicated by affidavit, and also confirmed to myself, that she will not be able to return to Germany if the Court directs that Clara return"*

– “my Husband is here, my other kid is here, ad Germany would be a disaster. Her father wouldn’t let me see her, so what would I do. **I would have to let her go, that’s just how it is.** And it’s not because I want to let her go, I want to make that clear”. **Ms Hopfengaertner told me she has tried to explain the position to Clara – “but I think she didn’t want to hear it”**” (page 7, expert report Sue Lightfoot, 15.06.2017).

b)

Clara’ mother also instructed Clara that even if she would join her to go back to Germany Clara’s father would not allow any contact between Clara and her mother. Clara made the experience of the loss of her father during the period from 2011 to 2017. Clara’s mother did not support the wish of the child to see her father.

The report writer stated for Clara’s mother: “**Ms Hopfegaertner does not believe this will occur, and suggested it is likely mother and daughter will completely lose their relationship. Ms Hopfengaertner considers it is likely Mr Schmidt will seek to isolate her from Clara, and influence Clara against her**” (page 18, expert report Sue Lightfoot, 15.06.2017).

The report writer stated the corresponding reaction from Clara: “**Clara spontaneously added – “let’s say she comes but Dad won’t let me see her. That would be really terrible”** (page 8, expert report Sue Lightfoot, 15.06.2017).

Clara has had no access to her father for 3.5 years. In Clara’s perception her mother is the only person who is available for her. All wishes to see her father were not granted by her mother.

So the expert Dr. Marianne Schwabe-Höllein stated in her report dated 31.01.2013: “**In the 3-wishes game which followed (Clara was to imagine that she was also granted three wishes by the fairy), Clara said without hesitation: “See daddy again”. Upon further inquiry through the Expert: “And how can we achieve this? The child replied sadly: “Mummy does not drive me to daddy’s house!” Expert: “Did you tell Mummy that this is what you want? Clara: “I told her that I want to see daddy”. Expert: “And what would you like to do with daddy?” Clara: “He takes me to the swimming pool every day”** (page 25, expert report Dr. Marianne Schwabe-Höllein, 31.01.2013).

- Expert Report Dr. Marianne Schwabe-Höllein, 31.01.2013 – Appendix **AS-1**

The District Court in Fürth which has been involved in this matter since 2011 declared on 17.12.2014: ***“The defendant [remark of the signatory: Mrs Lisa Hopfengärtner], however, has been ignoring this, her daughter’s dearest wish, all-out and consistently for years. For this, she is prepared to accept further significant disadvantages for her daughter. She, time and again, changes their place of residence, practically being on the run from the claimant, and keeps in hiding”*** (page 6, District Court Fürth, Germany, 17.12.2014, Az.: 201 F 1835/13).

The Higher Regional Court Nuernberg has been involved in this matter since 2011 and declared on 31.05.2016: ***“The Respondent puts down developmental and health problems of the child to the father’s wish for access. She does not reflect on stresses on the child originating from her own family. A further risk, according to the expert, lies in the repeated change in place of residence. While in the past strong bonds of daughter Clara with both her parents were detected, the disappearance of the Hopfengaertner family poses a risk for those bonds and the quality of them in the relationship to her father as well as to her mother”*** (page 10-11, Higher Regional Court Nuernberg, Germany, 30.05.2016, Az.: 9 UF 149/15).

Clara has made the negative experience that her mother does not accept her wish to see her father. Therefore Clara cannot believe that her father will be available for her in future in Germany or in New Zealand. In Clara’s perception and experience the only attachment person who is available for her is her mother. Clara does not want to lose her last parental relationship.

Now at an age of 10 Clara can appreciate that her mother does not want Clara to meet her father. This parental coalition pressure causes loyalty conflicts. And without any contact to her father her decision is without any alternative.

c)

If Clara had not told that her father was always willing to meet her but he had no chance to see her and that the mother told Clara wrong facts about her father then Clara would have an opportunity to rethink and reconsider her perception. If Clara had a minimum contact a contact of four weeks with her father she would definitely change her behavior. She then would be able to compare the claims of her environment with the true facts and come to a free decision. The signatory is able and willing to come to New Zealand and to show Clara

that he will be available for her as he was in the past. But all requests to have contact with Clara in New Zealand remained unanswered.

Does it appear as if the objection is reality based, and/or affected by undue influence? (7.3 to 7.16)

7.3 to 7.4 Clara's relationship with her mother – Loss of primary attachment

7.3

a)

The report writer stated: *"From the comments made by Clara, by Ms Hopfengärtner, by others who observe the relationship (e.g., Mr Hopfengärtner, both School Principals, Mr Warwoodf), and from my own observations, in my assessment Ms Hopfengärtner is Clara's primary attachment. Moreover it is clear there has always been a strong secure bond between Clara and her mother, and this is likely to have been a primary attachment from the beginning"* (page 7, expert report Sue Lightfoot, 15.06.2017).

With the expression *"primary attachment"* the report writer wanted to express that a hierarchy of Clara's attachments to her mother and her father exists. The assertion *"primary attachment"* person should verify a hierarchy between the relationships of children to parents - the central argument of the whole report to evaluate only the attachments of Clara to her mother and not the attachments of Clara to her father.

The report writer cited as evidence for her proposition psychological literature in footnote number 5 on page 7 (Allen, et. al., 2007; Emde, 1989; Kerns, et al., 2000, Matsuoka, et al., 2006). But none of these articles even mentions the term *"primary attachment"* and has any relation to the position of the report writer. On the contrary the article of Emde (1989, p. 37), Kerns, et al., (2000), p. 619) and Matsuoka, et al., (2006) supports explicitly the view of the signatory which is explained below. In the article from Matsuoka, et al., (2006) is stated: *"This study demonstrates that paternal care is no less important than maternal care in terms of adult attachment development"* (p. 27). In this article was also stated: *"Clinical and educational implications also merit discussion. First, because this study has highlighted the importance of the father in child-development, clinicians and educators should be more*

attention not only to the absence of the father but also to the relationship with the father" (Matsuoka, et al., 2006, 28).

These assumptions of the report writer do not correspond with the consensual knowledge of human sciences 2017 and were misleading.

b)

The consensual knowledge of human sciences of attachments of children to both parents is different and much further developed.

The idea of the report writer of a psychologically primary' parent was developed by Bowlby 1958: *„Acknowledging that little is known about the relative influence on personality development of the child's relationship with father and mother, Bowlby speculated that during the early years, the model of self interacting with mother may be more influential because the mother is likely to be the child's principal caregiver"* (Bretherton & Munholland, 2008, p. 104; see also: Bowlby, 1958, p. 370-371).

The idea of a primary attachment figure was reviewed by Bowlby 1969: *„During their second year of life a great majority of infants are directing their attachment behaviour towards more than one discriminated figure, and often towards several"* (p. 304). Research from Lamb, 1977; Main und Weston, 1981; Grossmann, Grossmann, Huber and Wartner, 1981; Kreppner, 1987; Tavecchio and van IJzendoorn, 1987, identifies the influence of more than one attachment figure, specially to both parents (Grossmann, Grossmann, Huber & Wartner, 1981, p. 175; Lamb, 1977, p. 646; Main & Weston, 1981, p. 939; Kreppner, 1987, p. 236-238, p. 257; Tavecchio & van IJzendoorn, 1987, p. 81). During their second year of life a great majority of infants are directing their attachment towards more than one discriminated figure, and often towards several.

„The infant-caregiver attachment relationship is co-constructed and exists between dyadic partners, as well as within each one" (Vaughn, Bost & van IJzendoorn, 2008, p. 201). Multiple attachment relationships were detected in several studies in all continents: *„We need a radical change from a dyadic perspective to an attachment network approach (Tavecchio & van IJzendoorn, 1987). In Western as well as non-Western cultures, most children communicate with several attachment figures (Lamb, 1977; Main & Weston, 1981), including siblings (Weisner & Gallimore, 1977). Examining the competence hypothesis only on the basis*

of infant-mother attachment may decrease predictive power substantially“ (van IJzendoorn & Sagi-Schwarz, 2008, p. 900).

Furthermore in human sciences it is consensual knowledge that only four categories of attachment exist (secure, avoidant, ambivalent, disorganized) but no hierarchy of attachments: *„In all, the complexity of our findings suggests that the developmental trajectories from infancy to adulthood with regard to attachment are indeed multifaceted, that developmental outcomes are multidetermined, and that continuity is multidimensional“ (Sagi-Schwarz & Aviezer, 2005, p. 191).*

These multidimensional attachment relationships of children to her parents are described by Waters and McIntosh (2011, p. 480): *„The idea that there should be one figure only was not Bowlby’s view in the end. It is also difficult when you use a term like “hierarchy“ which is a very specific claim about superordinate–subordinate relationships; this one is more important than that one, that one is more important than that one; it implies a rank ordering. Rather than saying that there is a hierarchy, I think a better perspective is this: it is possible for infants and children and for adults to use a multiplicity of figures for secure-base support. Multiplicity does not imply any particular relationship among them. You are not more or less, you are just another“.*

c)

To support her opinion of the existence of a *“primary attachment”* person, the report writer cited the expert report of Prof. Dr. Gottfried Spangler dated 04.02.2016: *“This is identified by Dr Spangler in his report. He refers to Ms Hopfengärtner as “the primary care to date”, and notes “At the time of the preliminary expert report, Clara appeared adequately developed, securely bonded to her (mother) and not neglected, and according to the observations in the preliminary report expert report, she (Ms Hopfengärtner) also showed emotionally responsive behaviour towards Clara” (page 7, expert report Sue Lightfoot, 15.06.2017).*

Prof. Dr. Spangler speaks of a *“primary care”* taker role of Clara’s mother not of a primary attachment figure of Clara. This statement of Prof. Dr. Gottfried Spangler is according to the consensual knowledge of human sciences 2017: *“Many of the important functions fulfilled by parents (e.g., providing guidance and limits, socialization of emotional expression, supporting relationships with peers, etc.) are not part of the attachment system and are best not*

assimilated to it" (Sroufe, 2005, p. 352-353). „Babies formed attachments to those with whom they interacted regularly regardless of their involvement in caretaking" (Lamb, 2002a, p. 99). For that reason „the infant-caregiver attachment relationship is co-constructed and exists between dyadic partners, as well as within each one" (Vaughn, Bost & van IJzendoorn, 2008, p. 201).

Macintosh and Waters (2011) argue that there is no correlation of care taking and attachment: „The notion that attachments differ in strength plays no role whatsoever in current attachment theory. There is no way of measuring the "strength" of attachment. It is important to get rid of this idea of strength of attachment because it makes you think that by sharing the amount of time available, the attachment will be the same strength with each parent. This is simply not true" (Waters & MacIntosh, 2011, p. 476).

Therefore Prof. Dr. Spangler states rightly: ***"According to the information from the preliminary report, Clara had a secure bond with both parents, so that, from this point of view these are good conditions for her staying with both parents. With her current life situation, especially with her contact with her father being suppressed, we can expect in Clara restrictions to her emotional wellbeing or an increased likelihood of emotional stress. For this reason, it is especially important that she has emotionally available attachment figures. There is no current information available on the quality of Clara's emotional ties, so we cannot exclude that in the meantime adverse changes in the quality of her emotional ties with both her parents may have occurred. On the basis of the prior substantially positive experience, we deem a consolidation, once the current restrictions have been eliminated, possible indeed"*** (page 71, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

„In sum, based on child development research, policymakers and decision-makers cannot support a priori assumption that parents of infants and toddlers can be rank ordered as primary or secondary in their importance to the children, and that mothers are more likely to be the 'psychologically primary' parents" (Warshak, 2014, p. 48).

Clara has secure attachments to both parents. Not more or less. And ***"on the basis of the prior substantially positive experience"*** and when ***"the current restrictions have been***

eliminated” a **“consolidation”** of the attachment bonds between Clara and her father is possible.

The signatory also wants to stress that the report writer made a statement on attachments without seeing Clara and her father together. The statement *“primary attachment”* of the report writer is a central argument of the whole report to prefer Clara’s mother as attachment figure – but this is an invalid and misleading psychological concept.

7.4

a)

The report writer stated: *“I’d live with Dad, that would be obvious. But oh, yeah, Mum would probably come? Because she says she loves me and that she won’t let anything bad happen to me, she’d protect me”*. Clara’s presentation at this point was highly anxious, and close to tears. Clara spontaneously added – *“let’s say she comes but Dad won’t let me see her. That would be really terrible”* (page 8, expert report Sue Lightfoot, 15.06.2017).

With this view Clara represented the fears and anxieties of her mother. Clara had only good experience with her father. And Clara has had no contact to her father since September 2013. At the last contact Clara made her beginner’s swim exam with her father. Two weeks later Clara’s stepfather prevented the next access with grievous bodily harm dated 20.09.2013 (so called ‘car incident’).

These statements of Clara show the attitudes of her mother and are evidence of the great coalition- and loyalty-pressure on Clara.

b)

Furthermore Clara’s mother told Clara that she will not come to Germany if Clara should be returned. The report writer stated: *“Ms Hopfengaertner has indicated by affidavit, and also confirmed to myself, that she will not be able to return to Germany if the Court directs that Clara return – “my Husband is here, my other kid is here, ad Germany would be a disaster. Her father wouldn’t let me see her, so what would I do. I would have to let her go, that’s just how it is. And it’s not because I want to let her go, I want to make that clear”*. Ms Hopfengaertner told me she has tried to explain the position to Clara – *“but I think she didn’t want to hear it”*” (page 7, expert report Sue Lightfoot, 15.06.2017).

The report writer also stated: *“Ms Hopfengaertner told me that she has clearly explained to Clara the implications for her, if Mr Schmidt is successful in his Application to have Clara returned to Germany. Whilst Clara on occasion appeared not to believe she would need to return without her mother, overall her comments to both myself and Mr Blair Lawyer for the child, clearly indicated she understood she would have to leave her mother – her most important adult, her sister, and Mr. Hopfengaertner, as well as her friends, and NZ lifestyle, behind. This would be the reality for Clara”* (page 11, expert report Sue Lightfoot, 15.06.2017).

This behaviour of Clara’s mother demonstrates that she is not focussed on Clara’s best interest.

If the child returns to Germany she should follow and live together with her daughter in a joint custody model, so that Clara would have access to both parents.

To tell Clara not to follow her and to explain to Clara that her father would not allow that Clara had access to her mother in Germany supports the pressure on Clara to ally with her mother against her father as well as to assume characteristics of the adult role. *“The double-bind is that the availability of the good-mother depends upon the child’s relinquishing her real feelings, memories, and perceptions that are associated with a positive connection to father”* (Johnston, Roseby & Kuehnle, 2009, p. 66-67).

7.10 to 7.15 Incident on 20/09/13 – objection to having contact with Mr Schmidt

The report writer stated: *“Clara reported to Mr Blair that she perceived in this incident her father was in the wrong. Clara told Mr Blair the incident upset her, made her feel scared, and changed how she felt about seeing her father. Ms Hopfengärtner independently told me similar, i.e., that this is when she got scared of her Dad. He fixated at her (his glance during this incident), for about one minute. She was interviewed by a visitation counsellor after we returned from a 6-month sabbatical, and she said she doesn’t want to see her Dad alone, not now, but later. Before that accident she would say her Dad didn’t do anything weird to her. I asked Clara if she ever thinks about her father. Clara said she does, and then spontaneously began to tell me about the incident on 20/09/13 – “we were at school, and me and Dad were going to meet at the café after school, but Dad wanted to pick me up from*

school, and Mum aid no, at the café. **And when we were in the car he did this. Like banging on the car with his hand. And that was the first time I was scared, that gave me such a big fright**". I asked Clara what she had thought at the time? Clara responded- "I don't know, I was so petrified, I didn't think of anything".

I asked Clara who had been the most scared at the time of the incident. Clara responded – **"me probably, or maybe Mum"**. I observed that Clara was agitated and emotionally elevated as she described the incident. In my assessment Clara's physical, behavioural, and emotional presentation as she gave the account, and the nature of her disjointed narrative in contrast to previous way of speaking, was all consistent with traumatic recall. In my assessment this is consistent with Clara's reported statement to the German Youth Welfare Officer that she did not currently have the courage to see her father, rather than reflecting Ms Hopfengärtner's "rejectionist attitude" as suggested in the 2014 Decision of District Court Furth, reported by Mr Schmidt".

I commented to Clara that I wondered if she had been influenced by her mother in her description of the above incidence, or in her decision not to see her father. Clara responded – "Mum always gave me the choice to see Dad. Even now, she always asks. But my answer most of the time is no. I haven't said yes yet. Probably because of all that's happening, and it's connecting to what's happening now - "that's what I think". I clarified – what's happening now? Clara explained – "it's getting bigger. This little thing, well it wasn't little, but basically I forget (about the car incident), and then it's started again. When I was here (in NZ), I forget everything. Now since Dad found us we are here, he's started doing stuff. **Mum gets all this stuff from him. And when she gets all that stuff from him or the lawyer, it worries her, she's in a bad mood, she doesn't like it probably. And so she's not very happy, and we also feel that as well, and we do a lot of things for Mum, and she tells us about what's happening now, and then my head goes back and I feel, uum, it feels very worried, sometimes scared**". Clara's account at this point was a very good description of the retriggering of traumatic memories, and in my assessment explains why she still considers the car incident as a key factor in her decision not to see her father."

I report Clara's comments to myself about her father in section 8.2-8.3. Clara described herself having pleasurable activities and positive experiences with Mr Schmidt. Some of their activities were recorded by Mr Schmidt and uploaded by him as You-tube videos (Appendix

1). It is clear in these that Clara is relaxed, comfortable in her father's company, and having fun. There was a clear difference in Clara's presentation however, when she talked to me about the car incident. I have already noted this was indicative of traumatic recall.

That Clara also has positive memories of her father and the activities they did together (section 8.2.3) which she can recount spontaneously and without hesitation, or evidence of anxiety and avoidance – in significant contrast to her recall of the car incident – indicates she has a reasonable range of feelings in her relation to her father. Overall, Clara shows none of the typical indicators for parental influence, alignment, or alienation, cited in literature.

Clara: (1) does not display global negativity and animosity towards Mr Schmidt, (2) Clara's reasons for objecting to seeing her father at the present, are not minor or "frivolous" but significant to her and reasonable, especially when it is considered she would have been 6 years at the time of the car incident, (3) Clara's views are also not stated in a rigid framework but indicate preparedness to see the possibility of contact in the future, (4) Clara is able to distinguish that it is her mother who "probably" doesn't like actions by her father, and this is different from her traumatic recall, (5) Clara does not cite her mother concerns about Mr Schmidt as reasons for her own beliefs, and (6) Clara's does not express animosity towards her paternal extended family (section 8.3)" (page 9-11, expert report Sue Lightfoot, 15.06.2017).

The report writer does not use the available information about this 'incident' and the interviews with Clara of this period. In the following sections the expert report of Doris Zimmermann dated 04.12.2014, the expert report of Prof. Dr. Gottfried Spangler dated 04.02.2016, the access decision of Higher Regional Court Nuernberg dated 28.03.2014, the sole custody decision of District Court Fürth dated 17.12.2014 and the sole custody decision of Higher Regional Court Nuernberg dated 31.05.2016 are considered. The documents contain authentic information. Furthermore an audio-tape of the 'car-incident' exists. This audio-tape can give evidence that the father did not bang "*on the car with his hand*". The report writer also makes misleading interpretations of the facts.

Facts and Figures

a)

On 20.09.2013 Mr Simon Hopfengärtner ran over Clara's father two times with his car. For that reason Mrs Lisa Hopfengärtner made a criminal complaint against Clara's father dated 22.09.2013. Also Mr Simon Hopfengärtner made a criminal complaint against Clara's father dated 27.09.2013.

The result of these complaints was an arrest warrant for grievous bodily harm against Mr Simon Hopfengärtner (Section 142 I No. 1, 223 I, 229, 230 I, 53 and Section 224 I No. 2 German Criminal Code). Against Mrs Lisa Hopfengärtner will be investigated for assistance in avoiding prosecution or punishment (Section 258 German Criminal Code).

In the arrest warrant for this criminal act is stated:

"The Accused is, therefore, charged with, through an independent act, having physically abused a person or damaged their health (Case 1) and through a further independent act having through negligence caused bodily harm to a third party (Case 2) and through a further independent act having, as a party involved in an accident, before allowing, for the benefit of the other parties involved in the accident and the Aggrieved, for his personal details, the make of his car and the nature of his involvement in the accident, to be confirmed through his presence at the scene of the accident (Case 3), punishable as bodily harm as well as bodily injury through negligence and illegally leaving the scene of an accident pursuant to Section 142 I No. 1, 223 I, 229, 230 I, 53 German Criminal Code. The applied for penalty order has not been issued by the Fürth District Court yet, because in regard to Case 1 a legal basis for grievous bodily harm pursuant to Section 224 I No. 2 German Criminal Court may be given, by reason of the vehicle having been used as a dangerous tool. ...

The urgent suspicion arises from the interviews of impartial witnesses, who reconstructed the events in the presence of an independent expert in situ, and the corresponding expert evaluation. The statement of a further witness to this event, Lisa Hopfengärtner, however, as matters stand at the moment, raises doubts as to the applicability of Section 258

German Criminal Code [remark of the signatory: Section 258: Assistance in avoiding prosecution or punishment]" (page 2-3, Arrest Warrant Simon Hopfengärtner, District Court Fürth, Germany 27.11.2014, Az. 461 Cs 703 Js 74456/13).

b)

The responsible judge in Germany argued further that this act was based on irrational behaviour:

"The Accused has already demonstrated that he is willing, in the pursuit of personal interests, even if those essential relate to his wife, to make significant personal sacrifices. If set free prior to the completion of these proceedings, further such behavior driven by a similarly irrational pattern can be expected. A suspending of this arrest warrant on the condition of a registration upon establishing the place of residence through the nearest District Judge is thus opposed" (page 3-4, Arrest Warrant Simon Hopfengärtner, District Court Fürth, Germany 27.11.2014, Az. 461 Cs 703 Js 74456/13).

c)

Mr Simon Hopfengärtner was convicted by the sentence of the Regional Court Nuernberg from 27.11.2014 to pay 10.871 EUR to Clara's father related to grievous bodily harm. Against this decision Mr Simon Hopfengärtner appealed on 16.12.2014. A second decision was made at 26.02.2015 – the appeal was rejected.

Clara's view

a)

Clara was heard two times regarding the 'car incident':

- Higher Regional Court Nuernberg, Germany, Access Decisions, Hearing of Clara, 28.03.2014
- Expert report Doris Zimmermann, Hearing of Clara, 04.12.2014

Higher Regional Court Nuernberg, Germany, Access Decisions, Hearing of Clara, 28.03.2014:

Clara was heard by three judges from the Higher Regional Court Nuernberg and the lawyer of the child Mrs Christiane Winckelmann on 20.02.2014. In that hearing Clara's mother submitted a version of a *"traumatization of the child"*.

Mrs Lisa Hopfengärtner declared at the court: *"By now, daughter Clara Larissa was no longer willing to have contact, due to the incident on 20.09.2013. The findings made by the Fuerth*

District Court in this matter were inconclusive. The assumption of the Court of First Instance, that it was plausible that the child was 'shocked' by the behavior of the father, is not consistent with the statement that the child's wish for contact with the father had not suffered under this. The District Court – Family Court – Fuerth had not conducted a hearing of the child on this matter. **It would have resulted in the determination of a traumatization of the child through the incident on 20.09.2013**" (page 13, Higher Regional Court Nuernberg, Germany, 28.03.2014, Az.: 9 UF 53/14)

The Senate of the Higher Regional Court Nuernberg assumed that there is no traumatization of Clara but that Clara adopts the will of her mother.

After the hearing of Clara the Higher Regional Court Nuernberg declared in his access decision dated 28.03.2014: *"Just because the conflict on 20.09.2013 alone, which took place in the presence of the child, the arrangement of contact supervision has become necessary, with it being irrelevant in this individual case, who contributed to what extent to the Applicant being hit and struck by the car of the Respondent's husband in front of the school building. Therefore, the taking into account of the criminal file against the husband of the Respondent (file ref.: AG Fuerth 461 Cs 703 Js 74456/13) for failing to stop after an accident and for bodily harm is not deemed necessary.*

The Respondent has been regarding her apartment and the school as a sanctuary for her daughter for quite some time, both of which the Applicant has not been allowed to approach. She, therefore, insisted that Applicant were not authorized to collect, when he suggested picking up his daughter from school. She referred to the child being collected from the café 'Cool Bits'. The Applicant invoked that the child, according to the access regulations in the decision (not signed by the Judge) of Fuerth District Court dated 09.07.2013, which he had believed to be legally valid, the child was to be picked up from the school. To prevent the father picking up the child at school, the mother left the school together with her child through a side exit and together with the child got into the vehicle driven by her husband. The Applicant was hit and struck by the car as it started moving.

*The daughter Clara also witnessed the incident. **In a hearing of the child conducted by the Senate, it mentioned of its own accord that her father, caused by the incident on 20.09.2013, has continuously been causing her fear and that she for that reason did not currently want contact with him. The Senate assumes that this is not the independent and***

sustained will of the child. The fact is rather that Clara, with this, adopts the will of her mother" (page 17, Higher Regional Court Nuernberg, Germany, 28.03.2014, Az.: 9 UF 53/14).

- Access Decision, Higher Regional Court Nuernberg, Germany, 28.03.2014, 9 UF 53 2014 – Appendix AS-2

Expert report Doris Zimmermann, Hearing of Clara, 04.12.2014:

The expert and contact supervisor Doris Zimmermann spoke at the end of 2014 with Clara. The expert states: *"When asked, Clara says that she last saw her father a year ago. **Clara indicates that she would like to see her father again.** 'I would like to show him how well I can swim'. The father would only know that she had passed her beginners swim exam (Seepferdchen). Further, she would like to: 'Watch films, because he has such beautiful films with really great ballerinas, Swan Lake, I really like that movie: I would like to watch that again'. Later Clara declares: 'I would also like to see my grandfather in Moenchengladbach'. When prompted, Clara says that she had also been at the 'Tucherland' adventure playground with her father. Clara asks the Undersigned Contact Supervisor: 'Do you know Schloss Thurn? I went there for my birthday with my other grandfather'. **She can imagine talking a trip there with her father as well.** 'I would like to do so many things, but I don't dare. Daddy hit our car and he showed on his mobile phone that he is calling the police'. Following, Clara describes the incident in front of her school. She explains: 'Daddy, that is my other daddy, Simon, started driving. Daddy rolled on his side and pretended he was hurt'. After being asked, whether she has seen that herself, Clara declares: 'I did see it and we knew that he (the father) did it on purpose and lied as well'. 'I would like to do everything with him again, but I don't dare to'" (page 2, expert report Doris Zimmermann, 04.12.2014).*

- Expert report Doris Zimmermann, 04.12.2014 – Appendix AS-3

Furthermore Clara explains to the Contact Supervisor, she can imagine meeting her father again, if he 'doesn't do any nonsense' and doesn't go to court anymore: *"Clara then explains to the Undersigned Contact Supervisor, she can imagine meeting with her father again, if he 'doesn't do any nonsense' and doesn't go to court anymore. If he managed to do that for one year, then she wanted to see him again"* (page 2, expert report Doris Zimmermann, 04.12.2014).

In the expert report of Prof. Dr. Gottfried Spangler dated 04.02.2016 is also stated that Clara's perception to be afraid is influenced by her mother: *"When determining the wishes of the child the findings clearly indicated that Clara wishes contact with her father. Also, in the last conversation with her contact supervisor, she stated that wish. **At the same time, she also expressed a fear of contacts with her father; the reasoning she gave, however, seemed hardly authentic, but influenced by the mother.*** The assessment of the child's wishes in the preliminary expert report, however, was in regard to contact sessions, so that we cannot readily make deductions from this as to her wish to stay with her father. There have not been any statements to the contrary suggesting that she would refuse staying with her father" (page 71, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

The conclusion of Prof. Dr. Gottfried Spangler based on the risks and problems of Clara also caused by the 'car incident' was: ***"In conclusion, we can state that in Clara's case a number of risks and problems exist, to which the mother significantly contributes, and for the managing of which she requires support, emotional support and encouragement from her parents*** [remark of the signatory: both parents]" (page 71, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

German Courts view

In the following documents the 'car incident' dated 20.09.2013 was evaluated by different courts:

- District Court Fürth, Germany, Sole Custody Decision, 17.12.2014
- Higher Regional Court Nuernberg, Germany, Sole Custody Decision, 30.05.2016

In the Decision of District Court Fürth, Germany dated 17.12.2014 is stated:

*"The transfer of parental custody to the father is in the best interest of the child. The ingrained resentment the mother of the child holds against the father of the child, by now significantly impairs the mother's ability to raise her daughter. It has now developed into the driving force behind the actions taken by the mother. With her actions, the mother willfully and significantly disregards the interests of her daughter. **From numerous statements the child made at access proceedings, from the psychological assessment created on that occasion by expert Dr. Marianne Schwabe-Höllein, from statements made by the Youth Welfare Office and the Guardian ad litem, it is not only known to the court, but also to the***

mother of the child, that her daughter desperately yearns for contact with her father. This has not changed to this day. Even after her having spent several months at an unknown location and even in light of an incident that happened on 20.09.2013, where Clara became eye-witness to a dramatic encounter between her father and her mother's husband, who was operating a passenger vehicle at the time, and on which the child only has the perspective of her mother for explanation, Clara told the contact supervisor that she would like to do 'everything with her father' again. That Clara, in light of her mother's hugely rejectionist attitude, which would not have gone unnoticed by her and her mother's prerogative of interpretation of the events on 20.09.2013, also entrusted in the contact supervisor that she did not have the courage, does not seem surprising and is not to be interpreted as a limitation of the clear wish of the child to see her father.

The defendant [remark of the signatory: the respondent], however, has been ignoring this, her daughter's dearest wish, all-out and consistently for years. For this, she is prepared to accept further significant disadvantages for her daughter. She, time and again, changes their place of residence, practically being on the run from the claimant, and keeps in hiding" (page 6, District Court Fürth, Germany, 17.12.2014, Az.: 201 F 1835/13).

In the Decision of Higher Regional Court Nuernberg, Germany dated 30.05.2016 was declared:

"The Respondent puts down developmental and health problems of the child to the father's wish for access. She does not reflect on stresses on the child originating from her own family. A further risk, according to the expert, lies in the repeated change in place of residence.

While in the past strong bonds of daughter Clara with both her parents were detected, the disappearance of the Hopfengaertner family poses a risk for those bonds and the quality of them in the relationship to her father as well as to her mother. In how far the quality of the bonds has actually been impacted, only the future can tell.

The wishes of the child are described by the expert as such, that the daughter - also after the preliminary expert report - wishes for contact with her father. According to the expert, this is substantiated by the daughter's behaviour towards the father, the joy to see him again at the

beginning of contact sessions, the child's cheerfulness during the sessions and her sadness at the end, as it could be seen on the video recordings. **At the end of 2014, daughter Clara expressed her wish for contact with her father to contact supervisor Zimmermann, after not having had any contact with him for over a year. The daughter's wish for contact was, however, accompanied with fear, which she associated with the incident that occurred on 20 September 2013. According to the expert, it is very likely that her utterances about that incident are not authentic, but that she has been repeating what the adults in her family said. This is indicated by her choice of words, when describing her father's behaviour during the incident, during which the father tried to enforce access to the child and the husband of the Respondent did not stop the car, in which the daughter was also sitting. Followed by Clara, when talking to the contact supervisor, attaching the wish for contact to the condition that her father was not allowed to "start any nonsense or go to court again." These are arguments adults would use. Overall, the expert determined that Clara has the wish for contact with her father - even after a separation of more than a year. The reservations uttered by the child speak for a manipulation of the daughter with a tendency to achieve estrangement.** On several occasions, the Respondent - already in the previous proceedings - adopted the position that having contact with the father was, due to his strongly manipulative behaviour, harmful for the child and detrimental to her development. She took the view that having contact with the father made it more difficult for the child to settle in with her new family. Neither the expert report by Dr. Marianne Schwabe-Hoellein, prepared in the course of the previous access proceedings, nor the expert report in the current proceedings confirm the assumptions of the Respondent.

After Prof. Dr. Spangler's expert report, it remains open, how Clara would currently express herself in regard to contact with her father. He would not exclude the possibility that she would express her wish for contact with the father increasingly less. Against the background of increasing manipulation that would not necessarily have to be seen as authentic. He also correctly noted that the child, to date, had only ever been interviewed in regard to contact sessions, but not on a permanent stay with her father. In regard to the child's wishes, her bond with her half-sister Charlotte and her mother's husband may also be significant.

In conclusion, the expert ascertained that problems exist with the child Clara to which the mother has significantly contributed and contributes still.

*In a comparison of the psychological characteristics and behavioural patterns of both parents, the expert determined differences, which led him to the expectation that the father was better suited to raise a child. He stated, in conclusion, that the mother of the child probably had basic parental skills for the care and education of her daughter Clara and that she was able to apply these skills in the first years of her daughter's life. While initially supporting contact with the father after the separation, she later ignored court decisions and did not allow the Applicant to have access to the child. **In doing so, she endangered the child's bond with the father. In her effort to keep the daughter away from the father, she hazarded significant developmental risks for the child**" (page 10-12, Higher Regional Court Nuernberg, Germany, 30.05.2016, Az.: 9 UF 149/15).*

Report Writer's View

The report writer has the following interpretation of the above described facts: *"In my assessment this is consistent with Clara's reported statement to the German Youth Welfare Officer that she did not currently have the courage to see her father, rather than reflecting Ms Hopfengärtner's "rejectionist attitude" as suggested in the 2014 Decision of District Court Furth, reported by Mr Schmidt"* (page 10, expert report Sue Lightfoot, 15.06.2017).

More than 3,5 years after the 'car incident' from 20.09.2013 the report writer detects in this 'car incident' *"the retriggering of traumatic memories"* which explains in the view of the report writer Clara's *"decision not to see her father"* (page 10, expert report Sue Lightfoot, 15.06.2017).

The 'car incident' from 20.09.2013 is a continuous attempt to influence decisions in family law with an act of violence - in Germany and now in New Zealand.

7.16 Conclusion

a)

In contrary to the above mentioned facts based on hearings with Clara the report writer comes in paragraph 7.16 to the conclusion that Clara's view is not influenced by her mother:

"I further consider Clara is referring to her own distress when stating she does not want contact with her father at the present time, and is not stating this view from parental influence, alignment, or alienation" (page 11, expert report Sue Lightfoot, 15.06.2017).

It was the method of the report writer to ask Clara if she was influenced by her mother. The report writer asked Clara *"if she had been influenced by her mother in her description of the above incidence"* (page 10, expert report Sue Lightfoot, 15.06.2017).

The report writer cites literature from Friedlander & Walters, 2010; Garber, 2011 and Stahl, 2004 to give her assumption scientific evidence.

The concepts of estrangement and alienation are described in detail in human science literature and gave alternative explanations for Clara's actual situation: An alienated child is defined as one who expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child's experience with that parent. *„Alienation describes the child's experience of parent A's negative emotions, words, and behaviors regarding parent B, such that the child resists or rejects contact with parent B without objective cause"* (Garber, 2014, p. 26; see also Kelly & Johnston, 2001, p. 251).

In the literature cited by the report writer can be found: *"Cases of alienation in which the child's relationship with a parent has been damaged or otherwise undermined by input from the alienating parent, and in which there are no elements of estrangement or enmeshment, typically involve a rejected parent who is a psychologically healthy, at least adequate parent who has enjoyed at least a reasonably good, and sometimes very good relationship with the child prior to separation"* (Friedlander & Walters, 2010, p. 101); and *"Specifically, I use the word 'alienation' to describe the convergence of relationship dynamics which together cause an individual to express unjustifiable and disproportionately negative reactions to a targeted*

individual” (Garber, 2011, p. 322); and Stahl (2004) gave recommendations for the evaluation of alienation:

“At a minimum, however, it’s important to focus on the following potential components:

- The attitude, beliefs, and behaviors of the aligned parent;*
- The attitude, beliefs, and behaviors of the rejected parent;*
- The overall functioning of the child, including his/her temperament and psychological, emotional, and academic functioning. Consideration of the child’s peer relationships, extracurricular interests and activities, support systems is also important.*
- The history of the family relationships. This needs to include an assessment of marital conflict, domestic violence, and abuse. Also to be evaluated is the history of the child’s attachment and relationship with each parent and the extent to which each parent has legitimately supported the relationship with the other parent.*
- The level of parental cooperation or conflict and the extent to which the child is exposed to and brought into the middle of the conflict” (Stahl, 2004, p. 24).*

Stahl (2004) gives also the following recommendations to overcome alienation pressure:

“Thus, rather than arbitrarily changing custody from one parent to the other, I believe that a range of potential options exist. This range of options includes:

- A change of custody to the other parent;*
- Joint physical custody with the child spending approximately equal time with each parent in a court-ordered arrangement;*
- Continued primary custody with the alienating parent while using therapy and parent coordination to assist in supporting and improving the child’s relationship with the rejected parent; and*
- Continued primary custody with the alienated parent while encouraging the rejected parent to withdraw from the child’s life until the child is older and more stable and ready to deal with the conflicts that may occur in trying to maintain both relationships” (Stahl, 2004, p. 24).*

The literature quoted by the report writer does not correspond with the report writer's opinion. Furthermore the consensual knowledge of human sciences in 2017 does not support the report writer's opinion either.

Johnston, Roseby and Kuehnle (2009, p. 367-368) mention possible reasons for the behavior of the alienating parent: *„Aligned parents with these dynamics have experienced the separation and subsequent custody litigation as inordinately humiliating, and in defense of themselves they project the blame so that they now harbor intense hostility and abiding distrust of the rejected ex-partner. To varying degrees, children are perceived as extensions of themselves, sharing their views, feelings, and experiences. Many aligned parents hold honest but erroneous or exaggerated convictions that the other parent has never loved or cared about the child and is at best irrelevant and at worse a pernicious or dangerous influence on the child. In their minds their child is urgently in need of being rescued from the rejected parent“.*

Alienating behavior is a form of emotional abuse of a child: *„Furthermore, we argue that alienating behaviour by parents is a malignant form of emotional abuse of children and needs to be corrected, whether a parent agrees or not“* (Johnston & Kelly, 2004, p. 84-85; see also: Warshak, 2010, p. 54).

b)

With the experiences from 2010 to 2016 different experts and courts in Germany described the influencing and estranging behavior of Clara's mother and the impact on Clara.

In the date of their publication:

In the expert report of Dr. Marianne Schwabe-Höllein dated 31.01.2013 is stated:

“An inquiry with the therapist, who has been treating Clara since February 2012, revealed that Clara had been looking forward to meetings with her father, but was very disappointed, when those did not happen, such as in the summer of 2012 (on the occasions of the two scheduled court appearances) and that the irregularity of the contact with her father had a rather negative effect of the child. As the child did not know how to handle the situation, according the therapist, she applied adopted avoidance strategies and sometimes said that she did not want to meet with her father or even defended his non-

appearance towards third parties. *The situation demanded a lot of adjustment from the child and for her to be able to find her place within her new family. She said, Clara had suffered setbacks in reading, was clearly fully occupied with the current issues and further therapeutic assistance was desirable (this conversation took place on 29.10.2012, being before the first meeting with the father on the same afternoon)” (page 22, expert report Dr. Marianne Schwabe-Höllein, 31.01.2013).*

and

“From the Expert point of view, the child’s wellbeing has significantly improved over the observation period of the Expert Report. This specifically also shows the flowing communication in which Clara showed the Expert on an i-Pad, how good she already was at reading and writing. Irritations caused by the contacts with her father could not be observed and were not reported either” (page 23, expert report Dr. Marianne Schwabe-Höllein, 31.01.2013).

In the expert report of Doris Zimmermann dated 04.12.2014 is stated:

“Clara then explains to the Undersigned Contact Supervisor, she can imagine meeting with her father again, if he ‘doesn’t do any nonsense’ and doesn’t go to court anymore. *If he managed to do that for one year, then she wanted to see him again. Queried, whether she has told this idea to her mother at all, Clara declares: “I thought of that myself”. Clara looks around the room for toys and discovers some hand puppets and encourages the Undersigned Contact Supervisor to play a game. She chooses a variety of puppets. With one puppet she explains casually: “This one is supposed to be the bad daddy”* (page 2, expert report Doris Zimmermann, 04.12.2014).

Three Judges of the Higher Regional Court Nuernberg and the lawyer of the child Mrs Christiane Winckelmann interviewed Clara on 20.02.2014 – five months after the ‘car incident’. In the access decision of Higher Regional Court Nuernberg dated 28.03.2014 is stated:

“ In a hearing of the child conducted by the Senate, it mentioned of its own accord that her father, caused by the incident on 20.09.2013, has continuously been causing her fear and that she for that reason did not currently want contact with him. The Senate assumes that this is not the independent and sustained will of the child. The fact is rather that Clara,

with this, adopts the will of her mother" (page 17, Higher Regional Court Nuernberg, Germany, 28.03.2014, Az.: 9 UF 53/14).

In the Decision of District Court Fürth, Germany dated 17.12.2014 is stated:

"That Clara, in light of her mother's hugely rejectionist attitude, which would not have gone unnoticed by her and her mother's prerogative of interpretation of the events on 20.09.2013, also entrusted in the contact supervisor that she did not have the courage, does not seem surprising and is not to be interpreted as a limitation of the clear wish of the child to see her father. The defendant [remark of the signatory: the respondent], however, has been ignoring this, her daughter's dearest wish, all-out and consistently for years. For this, she is prepared to accept further significant disadvantages for her daughter. She, time and again, changes their place of residence, practically being on the run from the claimant, and keeps in hiding" (page 6, District Court Fürth, Germany, 17.12.2014, Az.: 201 F 1835/13).

In the Decision of Higher Regional Court Nuernberg, Germany dated 30.05.2016 is declared:

"Followed by Clara, when talking to the contact supervisor, attaching the wish for contact to the condition that her father was not allowed to "start any nonsense or go to court again." These are arguments adults would use. Overall, the expert determined that Clara has the wish for contact with her father - even after a separation of more than a year. The reservations uttered by the child speak for a manipulation of the daughter with a tendency to achieve estrangement" (page 10-12, Higher Regional Court Nuernberg, Germany, 30.05.2016, Az.: 9 UF 149/15).

Furthermore the Higher Regional Court Nuernberg, Germany dated 30.05.2016 declared:

"While initially supporting contact with the father after the separation, she later ignored court decisions and did not allow the Applicant to have access to the child. In doing so, she endangered the child's bond with the father. In her effort to keep the daughter away from the father, she hazarded significant developmental risks for the child" (page 10-12, Higher Regional Court Nuernberg, Germany, 30.05.2016, Az.: 9 UF 149/15).

In the expert report of Prof. Dr. Gottfried Spangler dated 04.02.2016 is declared:

*“When determining the wishes of the child the findings clearly indicated that Clara wishes contact with her father. Also, in the last conversation with her contact supervisor, she stated that wish. **At the same time, she also expressed a fear of contacts with her father; the reasoning she gave, however, seemed hardly authentic, but influenced by the mother**”* (page 71, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

c)

Clara’s mother still influenced Clara’s perception of her father. She informed Clara about emails of lawyers and that this makes her angry. She directly transferred her feelings to her daughter and created a cross-generational coalition in which Clara has an overlay close, or enmeshed, relationship with her mother and an overly distant relationship with her father.

The report writer stated: *“I commented to Clara that I wondered if she had been influenced by her mother in her description of the above incidence, or in her decision not to see her father. Clara responded – “Mum always gave me the choice to see Dad. Even now, she always asks. But my answer most of the time is no. I haven’t said yes yet. Probably because of all that’s happening, and it’s connecting to what’s happening now - “that’s what I think”. I clarified – what’s happening now? Clara explained – “it’s getting bigger. This little thing, well it wasn’t little, but basically I forget (about the car incident), and then it’s started again. When I was here (in NZ), I forget everything. Now since Dad found us we are here, he’s started doing stuff. Mum gets all this stuff from him. And when she gets all that stuff from him or the lawyer, it worries her, she’s in a bad mood, she doesn’t like it probably. And so she’s not very happy, and we also feel that as well, and we do a lot of things for Mum, and she tells us about what’s happening now, and then my head goes back and I feel, uum, it feels very worried, sometimes scared”* (page 10, expert report Sue Lightfoot, 15.06.2017).

The report writer states also: *“Ms Hopfengaertner said she tried to explain the implications of the current Court proceedings to Clara, several weeks prior to my visit, to clarify the rest of the family would not be able to follow her back to Germany – “we got the papers and I thought she needed to know what was happening. She is mature enough to work it out, so I explained what would probably happen if I lose this case. And her reaction to that was I’m*

not going anywhere. And she's tried to ignore it all, but yes she does get how totally big the situation is" (page 12, expert report Sue Lightfoot, 15.06.2017).

The report writer states furthermore: *"I asked Clara how it would be if her father came to see her in NZ, and invited her to go swimming – would she be prepared to see him then? Clara responded – "what, just me and Dad? Well, uum, I haven't got a yes or a no, I'm not ready for it yet". I asked Clara what would be needed for her to get "ready"? Clara responded – "I don't know, I just need time. I'm not sure when I'm going to be ready, it might be next week or next year"* (page 14, expert report Sue Lightfoot, 15.06.2017).

The information about legal processes and the mother's statement not to follow her daughter to Germany leads to inappropriate generational boundaries in which a past marital relationship is paired with an excessively close and enmeshed cross-generational alliance between the mother and the daughter. The impact on Clara is a loyalty conflict: *"I'm not sure when I'm going to be ready, it might be next week or next year"*

There is a wide consensus in the research of human sciences that this instrumentalization of children has negative impact on the development of children (for example: Amato & Afifi, 2006, p. 232; Buchanan, Macoby & Dornbusch, 1991, p. 1026; Lopez, 1991, p. 260).

"Children experiencing this type of intensified parent-child relationship may feel pressed to ally with one parent against the other as well as to assume characteristics of the adult role. These children may become increasingly symptomatic over time if the enmeshed parents fail to enforce rules or to hold the child to age-appropriate standards of behavior (Nichols & Schwartz, 1995)" (Margolin, Oliver & Medina, 2001, p. 10; see also Spangler, 2003, p. 81).

„Turning to the significance of a conflicted relationship between parents for adolescents' development, it was claimed that not only maternal parenting but also unhealthy triadic alliances and children's loyalty conflicts mediate the negative effects of interparental conflict on adolescents' individuation in relation to their mothers" (Walper & Schwarz, 2001, p. 1949).

Clara showed all the symptoms which are described in the consensual literature of human sciences and which were detected by different experts and different courts in Germany between 2011 and 2016.

d)

Figure 1 illustrated the process of activities to estrange Clara from her father and the court results from 2011 to 2016.

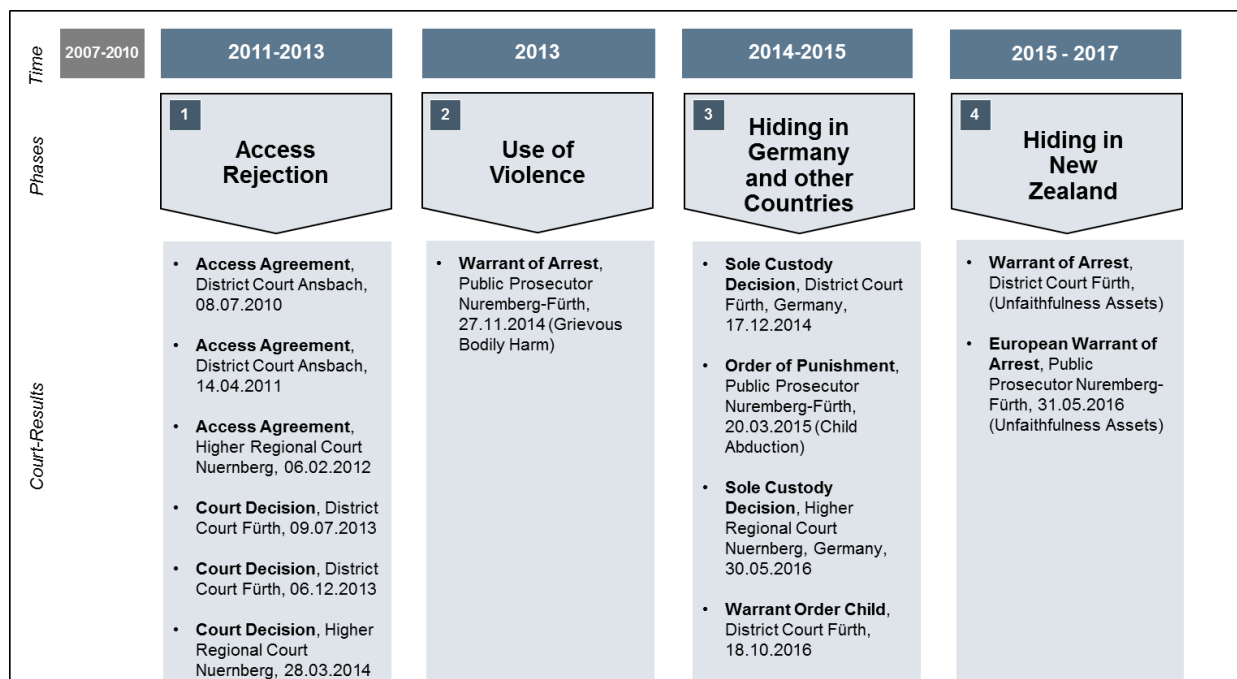


Figure 1 Estrangement Process Clara and her father and court results from 2011 to 2016

The report writer did not consider or even discuss these above mentioned options, which are based on facts.

Does it appear as if the objection able to be addressed by explanation or intervention? (7.17)

7.17

a)

The report writer stated: *"It clearly would be possible to provide Clara with therapy for post traumatic stress symptoms, and this could be considered. It is likely such an intervention would be useful in remitting symptoms, and thereby assisting her to think more positively about renewed contact with her father"* (page 11, expert report Sue Lightfoot, 15.06.2017).

First: the secure attachment of Clara to her father could be considered as a protecting factor, which may buffer the potential negative effects of the prejudiced behaviour of Clara's environment to the 'car incident'.

Second: the interruption of the contact with Clara's father could be reorganized – if necessary: *"The infant-caregiver attachment relationship is the core, around which all other experiences is structured, whatever impact it may have. Thus, we came to a position that early experience is never lost, however much transformation occurs in later development"* (Sroufe, 2005, S. 352-353).

Third: the change of the environment for Clara is not a change into a new world. Clara can rely on earlier experiences in Germany. So all adaption processes would be easy to handle.

„A developmental, transactional view of person and environment means much more than that both child and surround are important, or that one can predict behavior better by considering both. It even means more than considering person-by-environment interaction in a simple sense. It means that child and environment are mutually transforming. Thus, prior patterns of adaptation may be transformed by fundamental environmental changes and, at the same time, environmental features have different meanings and influence for different people" (Sroufe, Egeland, Carlson & Collins, 2005a, S. 229).

b)

The report writer stated: *"It is not possible however to address the very real issue for Clara that she will be leaving her whole significant world behind if she is required to relocate to Germany. Clara will be asked to separate from her primary attachment figure, the sibling she was grown up with, her stepfather, her friends, and the lifestyle she has known for the past 2,5 years. Providing therapy for post traumatic stress will not be able to redress this very serious and life-changing matter for Clara"* (page 11, expert report Sue Lightfoot, 15.06.2017).

In the modern developmental psychopathology exists no deterministic explanations for behavioral problems or emotional disturbances for children after experience of negative life-events. The human sciences utilize multicausal psychological risk-protection models (Rutter, 2002, 334; Spangler & Zimmermann, 1999, p. 193; Spangler & Bovenschen, 2013, p. 203). The essential defining feature is that there is a modification of the child's response to

possible risks situation. Thus, it requires some form of intensification (vulnerability) or amelioration (protection) of the reaction to a factor that in ordinary circumstances leads to a maladaptive outcome. So we need to understand the processes that protect a special child against risk mechanism. In the assessment of the report writer this step is missing but this step is necessary because all studies of risk factors for psychiatric disorder in childhood and adult life have noted the marked individual variations in people's response to stress and adversity; some succumb, and some escape damage (Rutter, 1990, p. 209).

Figure 2 showed the variables of the risks- and protecting factor model.

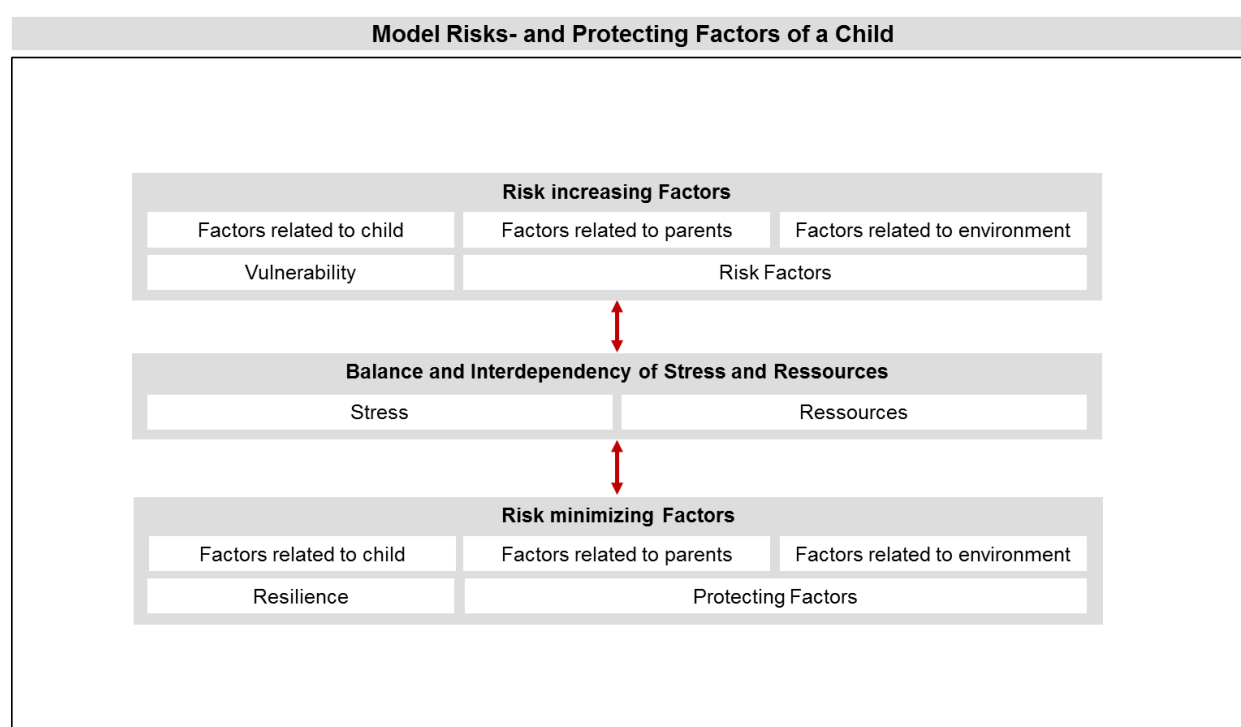


Figure 2 Model risks- and protecting factors of a child

The opinion of the report writer that *"it is not possible however to address"* the critical life event of a loss of an attachment person did not consider that Clara already made the experience of the loss of one attachment person. But Clara was described by the report writer as a good developed girl: *"good level of organized and rational thought, has already begun to make other important life decisions (e.g. which school she will attend), has a very good overall developmental ability, has very good interpersonal/psychosocial skills, has a good ability to manage her own feelings in relationship and manage her own behaviour, and has begun own sense of self (e.g. I am a "Kiwi")"* (page 11, expert report Sue Lightfoot, 15.06.2017) and *"In my assessment Clara does have an advanced development ability for her*

age, and would be more mature than many children her age in most areas" (page 14, expert report Sue Lightfoot, 15.06.2017).

In the report writer's opinion the loss of the father as attachment person is without any problems and that only the loss of the mother as attachment person matters (*"primary attachment figure"*) will cause problems: *"In my opinion the effects of disrupting Clara's secure attachment will be very considerable and extend over time. The first likely effects will be when Clara is told this is going to occur. She will experience a period of significant grief and depression, as she adjusts to the loss of her primary attachment figure"* (page 17, expert report Sue Lightfoot, 15.06.2017),

which were *"not possible however to address"* with therapy.

The report writer does not consider all variables of child, parents and environment:

„Attachment has proven to be perhaps the most important developmental construct ever investigated. At the same time, attachment researchers should be the first to acknowledge that early attachment experiences are not (and should not be) related to any and all outcomes. Likewise, it should be acknowledged that variations in attachment experiences are not the only vital influence on development, even in the domain of social relationships ... Attachment security is only one of many environmental influences on the developing child" (Sroufe, Egeland, Carlson & Collins, 2005b, S. 51).

The report writer also does not consider that in the case of no voluntary return of the mother to Germany Clara would have access to her father. If the mother would returned, Clara would have access to both parents.

Again the report writer's view of different attachment qualities to mother and father is the basis of her recommendation. The signatory referred to his arguments in section 7.3 to 7.4 Clara's relationship with her mother – Loss of primary attachment.

Prof. Dr. Gottfried Spangler made the following recommendation after considering all risks and opportunities of Clara:

"Questionable, and rather unlikely given the information available to date, is, however, a cooperation on the side of the mother to enable a positive changeover for Clara (as described above). If the mother's refusal to release Clara and to adequately prepare her results in an

abrupt forced removal of Clara, this certainly would result in extreme stress for Clara. Also, in this case, it would be important to work towards the access of the mother being upheld (even if the mother expressed her scepticism in this regard), so that the removal does not result in an experience of loss for Clara and lead to a breaking of the bond.

These statements make clear that the transfer of the right to determine the place of residence to the father, with a lack of the mother's willingness to cooperate, would result in a further risk for Clara in regard to an abrupt separation from her mother, whilst it cannot be excluded that Clara, in a worst-case scenario, would make her father responsible for the situation and that this, in turn, would massively negatively affect her relationship with him.

We have to weigh up the risks here. In a comparison of this risk with the existing risks, relevant for the recommendation, it is especially apparent, that the risk of discontinuation is one that is of a temporary nature, which can be processed with the support of the parents (in the taking up of contact sessions especially also with the mother's support), whilst the currently present risks are of a permanent nature and thus here for the long term. Please note that a temporary risk may turn into a permanent one, if it is not possible to maintain contact with the mother" (page 74, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

The Higher Regional Court Nuernberg, Germany dated 30.05.2016 declared:

"While initially supporting contact with the father after the separation, she later ignored court decisions and did not allow the Applicant to have access to the child. In doing so, she endangered the child's bond with the father. In her effort to keep the daughter away from the father, she hazarded significant developmental risks for the child" (page 10-12, Higher Regional Court Nuernberg, Germany, 30.05.2016, Az.: 9 UF 149/15).

It depends on the behavior of Clara's mother if she wants to stay in contact with her daughter. Up to now Clara's mother has estranged Clara from her father and allowed no contact between Clara and her father. Clara's father is willing to share custody of Clara.

Does the child have sufficient maturity and understanding to recognize the implication of the objection? (7.18 to 7.25)

7.25 Conclusion

The report writer states: *“In my assessment Clara does have an advanced developmental ability for her age, and would be more mature than many children in her age in most areas. I consider she has made a decision that has been understandably, both emotionally and logically based, and aimed at meeting her primary needs. While Clara is perhaps yet too young to apply a high order analytical, multifactorial assessment of her situation, her decision has been completely logical and appropriate for her. It is also likely to be the same decision mist older children and adults would make in her situation”* (page 14, expert report Sue Lightfoot, 15.06.2017).

A nearly 10 year old girl has not the experience or a standard of comparison to overlook all relevant variables of this case. Here Clara has furthermore no access to all variables. She did not know that her stepfather caused the ‘car incident’ (20.09.2013) she referred her perception. She has not in mind that her mother would probably also return to Germany. She did not know that her father would guaranty access of her mother to Clara in Germany. She did not know that her family in New Zealand lived from her assets.

But even if Clara would have access to all information she would not be able to make an impact evaluation. The cognitive skills are not developed in an age of 10 years for such a complex task. A ten year old child can not consider all relevant factors for its future development. A ten year old child has no objective benchmark to consider his best interest: *„Decisions about custody are complex and need to be based on many factors, and the quality of the relationships between the child and prospective custodians“* (Crossman, Powell, Principe & Ceci, 2002, p. 19).

8. Having regard to the defence that the child might be exposed to grave risk of physical or psychological harm, or otherwise placed in an intolerable situation (and having regards to the factual basis set out by the parent in support of the objection),

- **What is any would be the psychological impact on the child of an Order of Return to Germany?**
- **If the Court does order child's return to Germany, what steps may be taken or interventions put in place, to ameliorate any negative psychological impact for the child?**

Grave risk of physical or psychological harm, or otherwise placed in an intolerable situation. (8.1 to 8.4)

8.4 Possible Risk:

Mental Abuse of Clara

The report writer quotes the lawyer Michael Löwe: *"Ms Hopfengärtner's legal representative in Germany, Mr Loewe, has indicated by affidavit, that there was a substantial concern for Clara's psychological well-being and behaviour after she attended contact sessions with her father, and Ms Hopfengärtner was sufficiently concerned to access specialist psychological help for Clara, and request contact be supervised"* (page 16, expert report Sue Lightfoot, 15.06.2017).

This statement of the report writer does not correspond not with the facts.

The lawyer Mr Löwe states in his affidavit: *"The regulation of Mr Axel Schmidt's access to Clara was the subject of ongoing dispute between Mr Axel Schmidt and Mrs Lisa Hopfengaertner.*

Mrs Lisa Hopfengaertner reported in the proceedings that she had noticed Clara, after each of the contact sessions, displayed massive psychological and behavioural problems. For that

reason, **Mrs Hopfengaertner organized** for Clara to undergo psychological treatment for quite some time. **Mrs Hopfengaertner was the opinion** that Mr Schmidt behaved in manipulative manner and did not only directly cause the child mental harm, but also indirectly, by, for example, adversely affecting Clara's nuclear family and her social environment by means of persecution, libel and false criminal complaints. **Mrs Lisa Hopfengaertner, therefore, requested** that the number of contact sessions be reduced or that they be supervised, respectively, or that a neutral supervisor be present" (page 3, affidavit Michael Löwe, 31.03.2017).

- Affidavit Michael Löwe, 31.03.2017 – Appendix 4

Michael Löwe is no witness for the statement of the report writer "*that there was a substantial concern for Clara's psychological well-being and behaviour after she attended contact sessions with her father*". Michael Löwe only describes the perception of Mrs Lisa Hopfengärtner, he makes no evaluation of the accusations. Every sentence starts with Mrs Lisa Hopfengärtner.

The statement of the report writer is deliberately false and misleading.

To evaluate the accusation of Mrs Hopfengärtner the District Court Fürth, Germany ordered an expert report from Dr. Marianne Schwabe-Höllein, which was delivered on 31.01.2013. In this expert report Clara's well-being, bonds and wishes were described.

Referring to the accusations she declared: **"From the Expert point of view, the child's wellbeing has significantly improved over the observation period of the expert report. This specifically also shows the flowing communication in which Clara showed the Expert on an i-Pad, how good she already was at reading and writing. Irritations caused by the contacts with her father could not be observed and were not reported either"** (page 23, expert report Dr. Marianne Schwabe-Höllein, 31.01.2013).

In the Decision of Higher Regional Court Nuernberg, Germany dated 30.05.2016 was clarified:

"On several occasions, the Respondent - already in the previous proceedings - adopted the position that having contact with the father was, due to his strongly manipulative behaviour, harmful for the child and detrimental to her development. She took the view

that having contact with the father made it more difficult for the child to settle in with her new family. Neither the expert report by Dr. Marianne Schwabe-Hoellein, prepared in the course of the previous access proceedings, nor the expert report in the current proceedings confirm the assumptions of the Respondent” (page 10-12, Higher Regional Court Nuernberg, Germany, 30.05.2016, Az.: 9 UF 149/15).

Here is no risk exists from the side of Clara’s father.

Violence and Harassment

The signatory did not on 13.06.2009 – as reported in the affidavit from Mrs Lisa Hopfengärtner dated 31.03.2017 - nor at any other time commit domestic violence against Clara’s mother.

Once Mrs Lisa Hopfengärtner went into hiding since February 2014, the signatory had little choice but to attempt to locate Clara by contacting the family and associates of Mrs Lisa Hopfengärtner. Most of all investigations were then done by the police and the Public Prosecutor in Germany.

The evidence for these and for further allegations is documented in the affidavit of the signatory dated 21.04.2017. The report writer did not consider these arguments and the evidence of this affidavit and adopted over the false accusations of Clara’s mother.

The report writer knows that Mrs Lisa Hopfengärtner made against the signatory also false accusations at the police in New Zealand.

In the expert report is stated: *“Ms Hopfengäertner told me she believes Mr Schmidt was in NZ at least between 9. - 12. May. She said she has been advised that during these dates he visited her previous house, took photos of Clara’s school, and was interviewed by Police. Ms Hopfengaertner cited Police incident number “P0294558443”, however I did not confirm these matters”* (page 4, expert report Sue Lightfoot, 15.06.2017).

Even if these continuous suspicions were groundless, they would have the potential to influence Clara’s relationship with her father over the years. In this case loving involvement, acceptance and support for the child comes at the price of the child’s unquestioned allegiance, distortions in reasoning, judgment and moral integrity, and at the sacrifice of her relationship with the other parent (Johnston & Kelly, 2004, p. 79-80).

Here no risk exists from the side of Clara's father.

Emotion Regulation

Prof. Dr. Spangler states that Clara's father has good emotional regulation competences for Clara and that this would be a protecting factor for Clara: ***"Based on the existing secure bond with the father (or at least an expected consolidation of the bond) as well as based on the emotionally supporting parental behaviour on the side of the father, the conditions for a transfer of residence are positive on the side of the father"*** (page 71 expert report from Prof. Dr. Gottfried Spangler, 04.02.2016).

The report writer quotes three sentences of the expert report of Prof. Dr. Gottfried Spangler and declares these three sentences as a risk for Clara: *"His limitation in the regulation of emotions can be seen as a risk factor on the side of Mr Schmidt. Although he, when dealing with emotionally stressful situations, endeavours to apply rational-cognitive strategies and acquired knowledge for regulation purposes, he apparently does not consistently succeed in this, so that he possibly reacts in a helpless manner in some situations. That Mr Schmidt's strong orientation towards achievement may result in stress for Clara remains open"* (page 16, expert report Sue Lightfoot, 15.06.2017). The contents of this is that the father uses more rationally based decision strategies instead of emotional and irrational decision making.

These three sentences, which the report writer chooses, are furthermore taken out of context.

The complete passage from Prof. Dr. Gottfried Spangler is: *"On the side of the father, strength and protective factors in regard to his attitude towards child rearing and his parenting behaviour competencies as well as care motivation are given, which he is able to implement in a parenting context, so we can assume a willingness to care. A further positive characteristic is his bonding tolerance in regard to the other parent's relationship to the child. His limitation in the regulation of emotions can be seen as a risk factor on the side of Mr Schmidt. Although he, when dealing with emotionally stressful situations, endeavours to apply rational-cognitive strategies and acquired knowledge for regulation purposes, he apparently does not consistently succeed in this, so that he possibly reacts in a helpless*

manner in some situations. That Mr Schmidt's strong orientation towards achievement may result in stress for Clara remains open. While, on the one hand, a strong orientation towards achievement can pose the risk of overloading a child, Clara's advancement certainly plays an important role in observations of Mr Schmidt and Clara together, but it was found in his expectations he also listened to Clara, so an overloading of the child could not be detected. If we take the child's and the parents' characteristics together, or the risk and protective factors respectively, overall they speak for Clara's place of residence to be with her father. With him, the strengths and protective factors prevail significantly, while with Mrs Hopfengaertner the risk factors prevail, which could endanger a positive development for Clara. Due to the massive conflicts between the parents and the massively limited ability to cooperate between them (already observed in the preliminary expert report), also due to Mrs Hopfengaertner's recent complete blockage of communication, this all speaks for a recommendation of the transfer of sole custody to the father" (page 76, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

The statement of the report writer is misleading.

No risk exists from the side of Clara's father.

The psychological impact on the child of an Order of Return to Germany? (8.5 to 8.11)

8.5 Clara's relationship with her father - Trauma

The report writer states: *"In effect, Clara's relationship with her father was primarily formed before the age of 5 years. Five years ago (half her life ago). Moreover Clara's view of her father is at present strongly overlain by her memory of the incident discussed in section 7.11, and her awareness of the current Court proceedings. ... Essentially, a decision to require Clara to live with her father, is sending her to live with a stranger, who for her is associated with traumatic memory"* (page 16-17, expert report Sue Lightfoot, 15.06.2017).

Clara's relationship with her father was formed from July 2007 to September 2013.

Concerning the "trauma" of the 'car incident' the signatory refers to his explanations in number 7.11.

In the expert report of Doris Zimmermann, dated 04.12.2014, is stated:

“Clara indicates that she would like to see her father again. “I would like to show him how well I can swim”. The father would only know that she had passed her beginners swim exam (Seepferdchen). Further, she would like to: “Watch films, because he has such beautiful films with really great ballerinas, Swan Lake, I really like that movie: I would like to watch that again” (page 2, expert report Doris Zimmermann, 04.12.2014).

In 2017 Clara declared: *“I asked Clara what would be needed for her to get “ready”? Clara responded – “I don’t know, I just need time. I’m not sure when I’m going to be ready, it might be next week or next year” (page 14, expert report Sue Lightfoot, 15.06.2017).*

“I asked Clara if she ever thinks about her father. Clara said she does, and then spontaneously began to tell me about the incident on 20/09/13” (page 9, expert report Sue Lightfoot, 15.06.2017).

As reported by Dr. Marianne Schwabe-Höllein (page 22, expert report Dr. Marianne Schwabe-Höllein, 31.01.2013) Clara used avoidance strategies to overcome the situation to have no contact with her father and to compensate great coalition- and loyalty-pressure from her mother.

The central task it is to stop the influencing behavior of Clara’s mother on the perception of Clara’s relationship to her father and to reestablish the relationship with her father. Those are the risks for Clara which need to be stopped.

8.6 Mr Schmidt’s ability to regulate his reactions

a)

The report writer states: *“I consider it possible Clara might be at some risk for anger from her father as he struggles to adjust to his daughter” (page 17, expert report Sue Lightfoot, 15.06.2017).*

The signatory refers to his arguments in section 8.4 Possible Risk: *Emotion Regulation*. There is no evidence for the statement of the report writer.

b)

The report writer further argues: *“Negative effects will be particularly accentuated for Clara because she would not have access to any other for social support”* (page 17, expert report Sue Lightfoot, 15.06.2017). From the affidavit of the signatory, dated 21.04.2017 (page 60), the report writer should know that the signatory lived together with his partner and her 9-year- and eleven month-old daughter (DOB 18.08.2007).

In the decision of Higher Regional Court Nuernberg, Germany from 30.05.2016 is declared: ***“His [remark of the signatory: the applicant] social circumstances are in order. He is very involved in his profession, successful, well off and shows social commitment. He lives together with his partner and her daughter. There is no doubt that he will make sure the child has an optimal education”*** (page 10, Higher Regional Court Nuernberg, Germany, 17.12.2014, Az.: 9 UF 149/15).

The signatory has a wide social network with long relationships to friends, family members and neighbours.

Clara would also have contact to her grandparents. Clara always wanted to have contact with her grandfather Jochen Schmidt.

In the expert report from Dr. Marianne Schwabe-Höllein dated 31.01.2013 is stated:

*“When Clara then spotted her father, she happily ran into his arms again and cuddled up to him. The day offered much variety and there were many situations in which Clara needed her father as a basis for security – and used him as such (for instance, when encountering a neighbor in the first apartment we went to in Moenchengladbach, then at the first sporting venue we visited, as there were other athletes present, and at the second sports venue, where the father let her climb up and down a rope, and when visiting sheep on a paddock and when climbing a steep ladder at a little house in the park, just to name a few). **The little girl confidently moved around her grandfather’s house, established contact with nana and poppa without problem, when they popped in for a short while at the second sport venue, but kept her distance towards them. But then, she showed great delight, when she later at the house presented them with gingerbread she had baked herself together with her mother the day before”*** (page 21-22, expert report Dr. Marianne Schwabe-Höllein, 31.01.2013);

and

*“Even, if no criteria for the security or insecurity of bonds may be deducted from this picture, as the child did not want to draw the persons herself, **it still showed that Clara has a comprehensive intrinsic idea of the concept of family and that her family certainly includes her father’s family**”* (page 24, expert report Dr. Marianne Schwabe-Höllein, 31.01.2013).

In the expert report of Doris Zimmermann dated 04.12.2014 is stated:

*“Clara indicates that she would like to see her father again. “I would like to show him how well I can swim”. The father would only know that she had passed her beginners swim exam (Seepferdchen). Further, she would like to: “Watch films, because he has such beautiful films with really great ballerinas, Swan Lake, I really like that movie: I would like to watch that again”. **Later Clara declares: “I would also like to see my grandfather in Moenchengladbach**”* (page 2, expert report Doris Zimmermann, 04.12.2014).

8.7 to 8.8 Clara’s relationship with her mother – Loss of primary attachment

a)

Again the report writer examines the role of Clara’s mother as *“her primary attachment figure”*. The signatory refers to his arguments in section 7.3 to 7.4 Clara’s relationship with her mother – Loss of primary attachment.

These assumptions of the report writer do not correspond with the consensual knowledge of human sciences 2017: ***“Old-fashioned attachment concepts might have suggested that the main weight should be attached to whichever of the parents the child has the more secure attachment to. That mechanistic approach should no longer provide the criterion. Research findings, as well as theory, indicate that it is usual for children to have security-providing selective attachments with both parents, and often with grandparents or other relatives as well”*** (Rutter, 2008, p. 967).

The report writer describes possible results of loss of an attachment figure and the implications of the loss of Clara’s mother as attachment person. The report writer does not consider the implications of the loss of Clara’s father as attachment person and the importance of ongoing experiences between daughter and father for the continuity of attachment representations.

Clara has secure attachments to both parents.

In the expert report of Dr. Marianne Schwabe-Höllein dated 31.01.2013 is stated: ***“As described above already, there was clear indication, in all three visits the Expert was able to observe, that there is a secure bond with her father. This not only became evident in the reunification situations, but in a whole number of other situations, in which the child had been briefly insecure and had then been reassured by her father’s presence, that she was, so to speak, able to utilize him as a means of security. That this had been the case prior to this, is evident in film clips provides by the father, for example, showing them at a swimming pool, at a sporting facility or in Paris; it is apparent that the father had been available for Clara during the sensitive phase of bond development”*** (page 23, expert report Dr. Marianne Schwabe-Höllein, 31.01.2013);

and

*“In the stories within the “Attachment Story Completion Task” ASCT, Clara only made statements that related to the her mother’s surroundings, which is, however, not surprising, as the child has very little experience of her parents living together and she is only now able to make her first experiences of family life in the form of a patchwork family. Therefore, this does not need to be discussed in greater detail. **When it comes to the “questions of trust” her father certainly places on the representation level and very positively so”*** (page 24, expert report, Dr. Schwabe-Höllein, 2013).

In the expert report of Prof. Dr. Gottfried Spangler dated 04.02.2016 is stated: ***“According to the information from the preliminary report, Clara had a secure bond with both parents, so that, from this point of view these are good conditions for her staying with both parents”*** (page 71, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

For that reason all consequences the report writer mentions concerning the loss of attachment of Clara to her mother have the same validity as the loss of attachment of Clara to her father. In fact, the quality of parent-child relationship has been identified as a key mediator between parental separation and children’s later adjustment. Therefore the signatory illustrates some statements of J.B. Kelly – this author is named by the report writer in her references (page 22, expert report Sue Lightfoot, 15.06.2017) – to support his view.

Kelly (2002, p. 24) summarizes the negative implications on development of the loss of one parent: *„Both the child development and divorce research literature indicate that father absence is associated with greater risk for children, compared to children in two parent homes. The negative effects are linked to the reduced standard of living, the absence of parental time and supervision, and loss of shared activities and social capital normally provided by the absent parent (McLanahan, 1999; Menning, 2002; Sun, 2002). The greater risk is seen in behavioral problems, academic difficulties, and diminished attachments (Woodward, Fergusson, & Belsky, 2000)“.*

„Not surprisingly, therefore, children in both two- and single-parent families appear better adjusted when they enjoy warm positive relationships with two actively involved parents (Amato & Gilbreth, 1999; Hetherington, 1999; Lamb, 1999, 2002b; Thompson & Laible, 1999). Children are better off with insecure attachments than without attachment relationships, however, because these enduring ties play essential formative roles in later social and emotional functioning. There is also a substantial literature documenting the adverse effects of disrupted parent-child relationships on children’s development and adjustment, with a linear relationship between age of separation and later attachment quality in adolescents“ (Lamb & Kelly, 2009, p. 191).

Kelly and Lamb (2000, p. 303) argue: *„The evidence further shows that children who are deprived of meaningful relationships with one of their parents are at greater risk psychosocially, even when they are able to maintain relationships with the other of their parents. Stated differently, there is substantial evidence that children are more likely to attain their psychological potential when they are able to develop and maintain meaningful relationships with both of their parents, whether the two parents live together or not“.*

Both parents have different roles as attachment figures for their children. The contribution of mother and father to the child’s attachment development might be different and complementary depending on the role each parent plays in the socialization of their children for given culture: *„It is possible for infants and children and for adults to use a multiplicity of figures for secure-base support. Multiplicity does not imply any particular relationship among them. You are not more or less, you are just another. So people are used for different things for which they have expertise. Parents have different areas of expertise, and usually have and play complementary roles, like a pitcher and a batter in baseball, or like a pilot and air traffic*

controller. Practicing the one role does not give you much advantage toward becoming the other. Knowing one role does not teach the other. One parent may be more able to provide a coherent sense of attachment-related meanings than two for obvious reasons, but for a magical reason that you cannot divide libidinal energy“ (Waters & McIntosh, 2011, p. 480).

Therefore attachment research tells us that the ideal situation after separation of the parents is one in which children with parents have opportunities to interact with both parents frequently in a variety of functional contexts (feeding, play, discipline, basic care, limit-setting, putting to bed, etc.) (Malloy & Lamb, 2015, p. 745).

„To maintain high-quality relationships with their children, parents, need to have sufficiently extensive and regular interaction with them, but the amount of time involved is usually less important than the quality of the interaction that it fosters. Time distribution arrangements that ensure the involvement of both parents in important aspects of their children’s everyday lives and routines – including bedtime and waking rituals, transitions to and from school, extracurricular and recreational activities – are likely to keep nonresidential parents playing psychologically important and central roles in the lives of their children“ (Lamb, Sternberg & Thompson, 1997, p. 400).

b)

Parents and children’s lives are inextricably linked together throughout the life course. The parent-child relationship is a specific relationship that links a specific parent and a specific child throughout the lifespan.

The objective of the signatory is to keep both parents as attachment figures for Clara.

The report writer states: *“How quickly Clara is able to adjust to her situation is very much dependent on Mr Schmidt’s commitment to acknowledging Clara’s needs and meeting them. Ideally, Clara would be able to have very regular contact with her mother, especially during the immediate adjustment phase”* (page 18, expert report Sue Lightfoot, 15.06.2017).

The competence for education and the commitment of the signatory to guarantee the access of both parents has already been expressed in the different court decisions.

In the Decision of District Court Fürth, Germany from 17.12.2014 is stated:

“Although the court does not fail to appreciate that the child Clara has been living with her mother since birth and loves her for sure, it has to be concluded that a transfer into the care of the father is in the best interest of the child.

Other than the mother, who clearly puts living out her grudge towards the father of the child before the interests of her child, the father has already agreed to allow generous contact with the mother of the child. He is living in well-ordered circumstances and there is no doubt that he is able to give the child the opportunity to have a ‘normal life’, ***without one parent’s behaviour being fuelled by hatred of the other parent and with contact to both parents***” (page 7, District Court Fürth, Germany, 17.12.2014, Az.: 201 F 1835/13).

In the Decision of Higher Regional Court Nuernberg, Germany from 30.05.2016 is declared:

*“While support opportunities are given with both parents, the child has developed a secure bond with both parents and the aspect of continuity speaks against the father, **the child rearing competencies of the Applicant are to be regarded as much higher than those of the Respondent.** Her deficits in child rearing behaviour clearly surpass the disadvantages that may occur for the daughter Clara with a change of place of residence.*

*The father possesses an appropriate attitude towards child rearing, has positive behavioural competencies and care motivation. **We would like to especially emphasize his excellent knowledge of the child’s personality.** He is emotionally available for his daughter. His adequate attitude towards child rearing refers to the emotional needs of the child as well as competencies acquisition and promotion of performance. A small risk factor is his own insecure bonding representation, which is compensated through other strengths and protective factors. **The Applicant displays bonding tolerance in regards to the other parent’s relationship to the child, which will allow the child access to her mother after the transfer of residence.** His social circumstances are in order. He is very involved in his profession, successful, well off and shows social commitment. He lives together with his partner and her daughter. There is no doubt that he will make sure the child has an optimal education”* (page 9-10, Higher Regional Court Nuernberg, Germany, 30.05.2016, Az.: 9 UF 149/15).

Clara could benefit from the ***“rearing competencies”*** of her father and ***“his excellent knowledge of the child’s personality”*** and his attitude ***“to allow generous contact with the mother of the child”***. So a fine-tuned sensitivity and responsiveness to the feelings, needs, and abilities of Clara can be achieved to ensure an ongoing process of participation to know when to soothe and support and when to push and demand more.

c)

The signatory has a wider view of education: not only the quality and meaning of children’s relationships with each parent needs to be considered but also the age and developmental needs of children and the competences of the parents to fulfill these needs.

Complementary in importance to a parent’s respect for a child’s attachment desires is respect for his desire to explore and gradually to extend his relationships both with peers and with other adults. The three psychological needs of children: the need for autonomy, competence, and relatedness (Deci & Ryan, 1995, p. 42) could be best achieved in a social context (Deci & Ryan, 2000, p. 263) (see also meta-analysis from von Mitchell, L., Wylie, C. & Carr, M. (2008). Outcomes of early childhood education: Literature review. Report to the Ministry of Education, New Zealand. Ministry of Education, New Zealand).

The ***“rearing competencies”*** and ***“social commitment”*** of Clara’s father are appropriate to fulfill a balanced synthesis of two orthogonal dimensions of education, demandingness and responsiveness - and to reflect the balance of demands between society and the individual (Baumrind, 1971, p. 91; Baumrind, 2013, p. 12).

8.9 Clara’s relationship with her sister Charlotte – Loss of sibling relationship

The report writer cited literature of research of sibling relationships in traditional families and not of stepfamilies with half-siblings. These results could not be transferred on the situation of Clara with her 5 year younger half-sister Charlotte.

The relationships of siblings and half-siblings are ambivalent. They can support or burden the psychosocial development of children (Münder, 2009, p.4). Sibling’s relationships could be described with closeness, rivalry, conflict and envy (Cierpka, 2001, p. 448). There is empirical

evidence that siblings and half-siblings in stepfamilies often reported of an encumbering relationship (Walper, Thönnissen, Wendt & Bergau, 2009, p. 40).

The bigger the difference in age the bigger the difference in interest - therefore Clara would have more a caregiving function to her half-sister Charlotte than an interrelation relationship.

8.10 Loss of emerging sense of self

In the view of the report writer Clara would experience *"loss of emerging sense of self"* with a return to Germany. Since 2013 Clara has lived in different countries: Germany, Brazil, Scotland, Austria, Australia and New Zealand. Clara has had from her birth up to now 12 different residences. Since 2015 Clara has had 4 different residences in New Zealand. Her experience is to be on the run. In New Zealand extradition or deportation could be expected with high probability.

In Germany Clara could rely on her experiences in her father's house and park and her grandparents house. In future no further changes would be expected.

8.11 Conclusion

Trauma

The report writer stated: *"Increased symptoms of post traumatic stress, anxiety, fear about her safety, and hypervigilance, in the company of her father"* (page 18, expert report Sue Lightfoot, 15.06.2017).

The signatory referred to his explanations in number 7.3, 7.4, 7.10 - 7.15, 7.16, 7.17, 8.4, 8.5, 8.6, 8.7, 8.8 and 8.11 Cumulative Risk.

Anger and Conflict with Father (potentially)

The signatory cannot imagine wherefrom the report writer has any evidenc for this comment.

Loss of Primary Attachment

As reported under section 7.3 a primary attachment figure does not exist in the consensual knowledge of human sciences. Clara has secure attachment bonds to both parents. And

these attachments are based on different parental competences. This is also a reason why both parents should be responsible for children after separation. The competences of one parent cannot be compensated by the other parent.

There is no reason to believe that the signatory will “*isolate*” Clara from her mother (page 18, expert report Sue Lightfoot, 15.06.2017). Prof. Dr. Spangler who interviewed the signatory stated: ***“According to his statement, Mr Schmidt is prepared, in the case that the parental custody is transferred to him, to make this transfer a positive experience, and he has signalled his openness to reconciliation and emphasized that, in his opinion, the availability of both parents will still be important for Clara and that a cooperation may reduce the disadvantages of the developments to date. Thus, Mr Schmidt has explicitly stated his willingness to cooperate”*** (page 74, expert report from Prof. Dr. Gottfried Spangler, 04.02.2016).

The report writer does not consider that Clara’s mother has influenced the attachment of Clara to her father since 2011.

In the expert report of Prof. Dr. Gottfried Spangler is stated: *“Significant weaknesses and risk factors, however, on the side of Mrs Hopfengaertner, show up in her perception and interpretation of Clara’s emotions and needs, which are mainly channelled by her own needs and points of view. She is also only to a limited extent able to orient her behaviour towards Clara’s needs. This signals significant limitations to the volition of her care. This, on the one hand, concerns Clara’s school attendance and, on the other hand, her contact with her father. In regard to the contact with her father a significant bonding intolerance in regard to the other parent’s relationship to the child is given, which she expresses in her opinion and devaluation of the child’s father and especially in the total prevention of visitation rights. These characteristics are based on a limitation of her ability to regulate her emotions, which have to be seen in the light of Mrs Hopfengaertner’s own shaky bonding history, and the associated and probably not adequately processed traumatising experiences”* (page 75-76, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

And the report writer does not consider that this behaviour of Clara’s mother could also influence the attachment and relationship between Clara and her mother negatively.

The Higher Regional Court Nuernberg declared on 31.05.2016: *“The Respondent puts down developmental and health problems of the child to the father’s wish for access. She does not reflect on stresses on the child originating from her own family. A further risk, according to the expert, lies in the repeated change in place of residence. While in the past strong bonds of daughter Clara with both her parents were detected, the disappearance of the Hopfengaertner family poses a risk for those bonds and the quality of them in the relationship to her father as well as to her mother”* (page 10-11, Higher Regional Court Nuernberg, Germany, 30.05.2016, Az.: 9 UF 149/15).

Loss of Sibling Relationship

The signatory refers to his explanations in number 8.9.

Loss of Sense of Self

The signatory refers to his explanations in number 8.10.

Cumulative risk

The report writer states: *“It needs to be noted that psychosocial and environmental risk factors produce cumulative negative effects for children, and attachment loss/abandonment and trauma are two of the most serious risk factors in a child’s life (Copeland et al., 2009). Overall it is likely a required return to Germany without her mother, will have a profound negative psychological impact for Clara”* (page 19, expert report Sue Lightfoot, 15.06.2017).

This statement of the report writer does not correspond with the facts.

a)

Copeland, Shanahan, Costello & Angold (2009) did not reported *“attachment loss/abandonment and trauma are two of the most serious risk factors in a child’s life (Copeland et al., 2009)”* which were items in the category *“stressful life events”* as high risks factors in their research.

The potential risks factors *“family dysfunction”* (parent–child conflict, interparental problems) and *“parental risk characteristics”* (parental mental illness, parental criminality) have the highest risks in their research: *“The High Risk: Poor Relations/Parental Dysfunction class (see Figure 1d), had four risk factors with IEPs greater than .5. These came*

from the domains of family relational dysfunction (parent–child conflict, interparental problems) and parental risk characteristics (parental mental illness, parental criminality). Compared to the other risk classes, this class also had the highest (but below .5) IEP values for poor supervision, parent–child tensions, mal-treatment, and violence and loss events“ (Copeland, Shanahan, Costello & Angold, 2009, p. 455). In %-observations in this research the risk *“loss life events”* in the category *“stressful live events”* has a value of 9.2 %. The risk *“step parent dysfunction – criminality in step-parent”* has a value of 11,9 % and the risk *“parental crime”* has a value of 37.1% (Copeland, Shanahan, Costello & Angold, 2009, p. 453).

b)

Furthermore this statement of the report writer does not consider that risks are only ‘one side of the medal’ (Scheiterhauer & Petermann, 1999, p. 5). Risk factors can be compensated by protecting factors of the child, her parents and her environment.

The signatory refers to his explanations in number 7.17 that human sciences use multicausal psychological risk-protection models (Rutter, 2002, 334; Spangler & Zimmermann, 1999, p. 193; Spangler & Bovenschen, 2013, p. 203).

The signatory also refers to figure 2.

A major counterpoint to changing the social circumstances of children’s lives is the idea of changing the characteristics of children themselves. Resilience connotes positive adaption by individuals despite severe adversity. *“Over the past three decades, studies of resilience have focused on individual variation in response to risky conditions such as stressful life events (Gramezy, Masten, & Tellegen 1984; Weist, Freedman, Paskewitz, Proescher et al., 1995), exposure to community violence (White, Bruce, Farrell, & Kliwer, 1998), maltreatment (Moran & Eckenrode, 1992), urban poverty (Luthar, 1999), divorces (Hetherington, chapter 9 this book) and maternal mental illness (Sameroff et al. 1982). These studies have brought sharper attention to the protective factors that influences stress and resistance in children and adolescents”* (Sameroff, 2006, p.61).

“The evidence that multiple risk factors should be reduced if child outcomes are to improve means that clinical and intervention programs should be multifaceted. The discovery of

promotive factors that affect many risk factors simultaneously could lead to simpler and less expensive interventions” (Sameroff, 2006, p.72).

c)

The expert Prof. Dr. Gottfried Spangler considers in his report all risks and opportunities for Clara:

“If we take the child’s and the parents’ characteristics together, or the risk and protective factors respectively, overall they speak for Clara’s place of residence to be with her father. With him, the strengths and protective factors prevail significantly, while with Mrs Hopfengaertner the risk factors prevail, which could endanger a positive development for Clara. Due to the massive conflicts between the parents and the massively limited ability to cooperate between them (already observed in the preliminary expert report), also due to Mrs Hopfengaertner’s recent complete blockage of communication, this all speaks for a recommendation of the transfer of sole custody to the father” (page 75-76, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

By considering all risks and opportunities for Clara connected with a shift of caretaking Prof. Dr. Gottfried Spangler also makes recommendations for the implementation: ***“Against the background of the given scenario, we cannot safely assume that Clara’s transfer into the household of the father will go ahead amicably (although this would be desirable). Thus, in case of an implementation of this recommendation, a further risk factor will come into play that Clara is removed from her mother delivered to her father, possibly under the use of force. As this measure is considered a temporary risk characteristic, this does not outweigh other risk factors on the side of the mother to such an extent that it would warrant maintaining the current status quo. For a minimisation of this risk (possibly with the involvement of youth welfare or a mediator) it should be ensured that Clara can be prepared for the transfer to her father, and that she has the opportunity to maintain contact with her mother. This requires the cooperation of both parents”*** (page 77, expert report Prof. Dr. Gottfried Spangler, 04.02.2016).

If the Court does order child's return to Germany, what steps may be taken or interventions put in place, to ameliorate any negative psychological impact for the child? (8.12 to 8.17)

8.12

The report writer states: *"Adult support and encouragement has been found to be an important factor in a child's recovery from traumatic grief. Notably even if Clara receives sympathetic support from her father, they do not currently have a close or significant attachment, and Mr Schmidt may not always understand the reactions of his adolescent daughter"* (page 19, expert report Sue Lightfoot, 15.06.2017).

a)

The signatory refers to his explanations in number 7.3, 7.4, 7.17, 8.4, 8.5 to 8.11.

The report writer's opinion that Clara's father will not have the resources to support Clara's needs must be rejected.

The Higher Regional Court Nuernberg who had the opportunity to hear Clara's father several times from 2011 to 2016 states in his decision dated 30.05.2016:

"The father possesses an appropriate attitude towards child rearing, has positive behavioural competencies and care motivation. We would like to especially emphasize his excellent knowledge of the child's personality. He is emotionally available for his daughter. His adequate attitude towards child rearing refers to the emotional needs of the child as well as competencies acquisition and promotion of performance. ... His social circumstances are in order. He is very involved in his profession, successful, well off and shows social commitment. He lives together with his partner and her daughter. There is no doubt that he will make sure the child has an optimal education" (page 9-10, Higher Regional Court Nuernberg, Germany, 30.05.2016, Az.: 9 UF 149/15).

b)

If support would be necessary Clara's father has a wide network which can support Clara and her father:

Dr. Thomas Jaeger, Chief Physican (in the hospital where Clara was born)

Neurologist, Psychiatrist, Medical Psychotherapist

Address:

Städtische Kliniken Mönchengladbach GmbH

Elisabeth-Krankenhaus Rheydt

Hubertusstraße 100

41239 Mönchengladbach

Germany

Phone: 0049-2166 394-2311

E-Mail: thomas.jaeger@sk-mg.de

Internet:

www.sk-mg.de

Dr. Bernd Dahmen, Paediatrist (former paediatrist from Clara Larissa Schmidt and neighbor)

Address: Botzelaerstraße 10, 4199 Mönchengladbach, Germany

Phone: 0049-2166-602842

Prof. Dr. Karl Josef Kluge (University of Cologne, former Managing Director of Child and Adolescent Psychiatry of LVR Viersen, Johannisstraße 70, 41749 Viersen, Germany ; author expert report for Clara Larissa Schmidt dated 29.05.2013)

Address: Ninive 59, 41747 Viersen, Germany

Phone: 0049-2162-24606

E-Mail: kluge@euroges.de

Internet:

https://de.wikipedia.org/wiki/Karl-Josef_Kluge

<https://www.hf.uni-koeln.de/35260>

<http://www.karlkluge.de/>

Prof. Dr. Karl Westhoff (University of Dresden, author expert report for Clara Larissa Schmidt dated 05.03.2013)

Address: Wiesenstraße 63a, 51371 Leverkusen, Germany

Phone: 0049-2173-2034860

E-Mail: mail@karl-westhoff.de

Internet:

<https://www.zpid.de/psychauthors/index.php?wahl=forschung&uwahl=psychauthors&uuwahl=p00271KW>

https://www.zpid.de/psychauthors/index.php?wahl=forschung&uwahl=psychauthors&uuwahl=p00271KW_public

Sabine Nießen, Diplom Sozial-Pädagogin (Youth Welfare Services; she knows Clara since 2009)

Address:

Evangelische Stiftung Hepetha

Düsseldorfer Straße 93-95

40822 Mettmann

Germany

Phone: 0049-2104-95366712

E-Mail: sabine.niessen@hephata-mg.de

Internet:

<https://www.hephata-mg.de/>

8.14

Clara can rely directly to her history in Germany. The residences, Clara's park, her grandparents, well known neighbours and the social network of her father are still known to Clara and were directly available. Here no further changes occur.

8.15 to 8.16

The signatory refers to his explanations in number 7.3, 7.4, 7.17, 8.4, 8.5 to 8.11.

The objective of the signatory is to maintain both parents for Clara as attachment figures.

This could only be achieved with intensive contact from Clara to both parents.

8.17

The signatory refers to his explanations in number 8.6.

The signatory is in continuous contact to Bernhard Gehringer, the father of Clara's mother.

Clara would have access to her grandpa Bernhard Gehringer and her grandparents Sieglinde Schmidt and Jochen Schmidt (the mother of Mrs Hopfengärtner is no longer alive).

So Clara can have a broader view on family relationships.

9. Noting the child's age cognitive ability and maturity, comment on the child's likely ability to accommodate her relocation back to Germany. (9.1)

The signatory refers to his explanations before.

B. Methodological review

1. Right to be heard

The report writer Sue Lightfoot did not react to an email of the signatory dated 25.05.2017 in which he announced to be available for a hearing in New Zealand. Instead of any reaction the report writer states: *“I have not had the opportunity to interview Mr Schmidt for the purposes of this report (section 2.2). I did email Mr Schmidt’s Solicitor Mr Roots, and offer the opportunity for Mr Schmidt to be interviewed in NZ, or state his position by email if he wished”* (page 4, expert report Sue Lightfoot, 15.06.2017). In contrary to that the report writer interviewed the other parties six times personally and by telephone.

2. The false and misleading use of psychological concepts as evidence for the report writer’s views.

The report writer uses false psychological concepts like *“primary attachment”* to support a better attachment of children to mothers (e.g. page 7, expert report Sue Lightfoot, 15.06.2017).

Furthermore the report writer uses psychological concepts like *“cumulating risk”* without considering that not only risk factors are relevant but also protecting factors and that the balance and interdependency of risk increasing factors and risk minimizing factors need to be considered (page 19, expert report Sue Lightfoot, 15.06.2017).

3. The false and misleading use of psychological literature as evidence for the report writer’s views.

The report writer quotes psychological literature to support her view. In most of the cases the quoted literature does not even have any relationship to the opinions the report writer wants to express.

4. The misleading and false use of quotations of witnesses as evidence for the report writer’s views.

The report writer quotes witnesses deliberately wrong to support her point of view. Prof. Dr. Gottfried Spangler is cited misleadingly by the report writer to give evidence of the view of

the report writer that Clara's mother is the "*primary attachment*" figure for Clara (page 7, expert report Sue Lightfoot, 15.06.2017).

The lawyer Michael Löwe is quoted deliberately wrong to give evidence for the assertion of the report writer for a "*mental abuse of Clara*" by her father (page 16, expert report Sue Lightfoot, 15.06.2017).

5. False use of methods

The report writer ignores the facts and findings of all German courts and experts that Clara is influenced in her perception by her mother and that the mother has used an estrangement strategy for years. The report writer asked Clara "*if she had been influenced by her mother in her description of the above incidence*" (page 10, expert report Sue Lightfoot, 15.06.2017).

To obtain information about influencing behavior you cannot ask a target person (and here a child ten years old) directly. Indirect methods must be used. The signatory refers to the publication:

Westhoff, K. & Schmidt, A. (2014). The Decision-Oriented Interview (DOI) as a Marketing Instrument for Obtaining Information about Brands. *International Journal of Business and Social Research (IJBSR)*. 4 (10). 92-104.

The decision-oriented-interview, which is described in this article, can be used in nearly all sectors.

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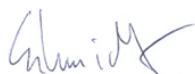
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A handwritten signature in blue ink, appearing to read 'Axel Schmidt'.

Axel Schmidt