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Re U-B (A Child)

[2015] EWCA Civ 60

06/02/2015

Barristers
Private: David Williams QC
Jacqueline Renton KC

Court
Court of Appeal (Civil Division)

Practice Areas
International Children Law

Summary
A judge had considered and given weight to the relevant evidence and had exercised his discretion in a way that was properly open to him in refusing to order a child's return to Spain on the basis that the circumstances fell within the child's objection exception in the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.13.

Facts
The claimant mother appealed against a refusal to order the return of her son to Spain.

The mother and defendant father had separated when their son was about 18 months old. From 2003 until the summer of 2014 the son lived with his mother in Spain. He used to come regularly to see his father, who lived in England, for long holiday periods. He came to England in mid-July 2014 and was due to return to Spain in mid-to-late August 2014 but did not do so. The mother consequently applied under the Hague Convention on the Civil Aspects of International Child Abduction 1980 for an order that he be returned to Spain. The judge refused the application, holding that the circumstances fell within the child's objection exception in art.13 of the Convention and that the appropriate exercise of the resulting discretion was to decline to order the son's return to Spain. In reaching his decision, he referred to the fact that the son had given a 10/10 score to remaining in England, and to the CAFCASS officer's evidence that the son's 10/10 score could not have reflected the positive features that he had described about living in Spain, as well as her evidence that he would get on a plane to Spain if required to do so.

The mother argued that the judge had failed to (1) give weight to and analyse the relevant evidence, including the inconsistency between the son's 10/10 score and his recognition that there were positive features about life in Spain, as well as the CAFCASS officer's evidence; (2) analyse whether her son's views had been formed in the "bubble of respite"; (3) approach the exercise of his discretion properly.

Held

(1) The judge did not fail to take account of the relevant material. Before determining that the son objected to his return, the judge referred expressly to the CAFCASS officer's acceptance that a score of 10/10 could not possibly have reflected the positive factors that the son had described about Spain, and to her view that he would get on a plane to Spain but would return to England as soon as he could. It was for the trial judge to weigh up the various pieces of evidence that contributed to an overall picture of a child's views to determine what they were and whether they amounted to an objection: he, unlike the appellate court, had heard personally from the CAFCASS officer who was cross-examined on behalf of each of the parents. The features upon which the mother relied were not inconsistent with her son objecting to a return, and the judge was entitled to find that the son did object to his return (see para.29 of judgment). (2) Reference to a "bubble of respite" had become commonplace in abduction cases. It was helpful insofar as it indicated that the context in which a child's views were expressed could potentially be relevant in an evaluation of those views, but it was not a separate test that had to be applied when determining whether the child's objections exception was established. The judge was acutely aware of the features that might make life in England more appealing for the son than a return to Spain. In the circumstances, there was no basis for saying that he failed to have the relevant consideration in mind (para.30). (3) When approaching a judgment in abduction cases, it was important to remember that a vital part of the process under the Convention was speed. The interests of children were generally best served if the courts determined cases with as little delay as possible, and judges therefore did not have the luxury of time. Accordingly, the appellate court had to be realistic about what could be achieved in the time allowed and on the material available. Further, it was sometimes not easy, or even possible, for judges to explain why one factor outweighed another: sometimes all a judge could do was to place the factors on one side or the other of the scales and say which way he considered the scales tipped. In the instant case, the judgment allowed one to be satisfied that the judge had the relevant features in mind and balanced them in a way that was open to him. Accordingly, there was no cause to interfere with his decision (paras 34-36, 44). (4) (Per Davis LJ) Each case was fact- and circumstance-specific. A minute dissection of the evidence and of the judgment was not appropriate in such cases: such an approach imposed too great a burden of judicial exposition to be required of first instance judgments in what were, after all, summary proceedings. The appeal court could not be used as a vehicle for conducting in effect an entire rehearing in such circumstances (para.52).

Permission

Lawtel

To read the judgment, please click here.