

K v K (2006)

[2007] 1 FCR 355

27/10/2006

Barristers

Catherine Wood KC, MCI Arb

Court

Family Division

Facts

The father of a nine-year-old girl had not consented or acquiesced to her removal from Poland to the United Kingdom by her mother, and her removal was in breach of the Hague Convention on the Civil Aspects of International Child Abduction 1980 Art.3. Given the lack of strength and clarity in the girl's objections to being returned to Poland, her case was not exceptional so the court would accede to the father's request to return her to Poland.

The applicant father (F) applied under the Hague Convention on the Civil Aspects of International Child Abduction 1980 for the return of his nine-year-old daughter (D) to Poland. D's mother (M) and F, both Polish nationals, had separated, after which time they had joint custody of D. M took D to live with M's mother. M then moved to the United Kingdom to take up employment while D stayed with her maternal grandmother and visited F at weekends. D then flew with her maternal grandmother to the UK to live with M, where she stayed, according to M, with F's consent. F denied that he had given such consent or even that he knew that D was going to the UK. F, unbeknown to M, issued the application to have D returned but as M's address was unknown a location order was made. M was located and served and D was interviewed by a CAFCASS officer. During the interviews, D expressed conflicting views as to where she wished to live. M submitted that she had a defence under the terms of Art.13 of the Convention on the grounds that (1) F had consented to D's removal to the UK and had then acquiesced in her retention; (2) D objected to returning to Poland and was of an age and maturity at which the court should take account of her views.

Held

HELD: (1) The removal of D to the UK was in breach of Art.3 of the Convention as D was habitually resident in Poland when she left and F had rights of custody. It was for M to prove that there had been consent and acquiescence. It was clear from the evidence that D was brought from Poland without any prior notice or warning to F and he was not asked nor did he give his consent at any time. Further, F never acquiesced to D remaining in the UK. M relied solely on F's supposed lack of action rather than any positive averment by him. The fact that F did not tell M, on the advice of his solicitors, that he had started Convention proceedings did not amount to acquiescence. To warn of his actions would have been to alert M, whose address he did not know, and she might have moved to a new address. (2) Weight

could be given to D's views, given her age and maturity, but it was difficult to ascertain her perspective about returning to Poland because she had expressed conflicting opinions. A case had to be exceptional before the court should refuse to return a child wrongfully brought to the UK in breach of the Convention. Given the lack of strength and clarity in D's objections to being returned, her case was not exceptional.

Application granted.

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