

Re S (Removal from Jurisdiction)

[1999] 1 FLR 850

25/11/1998

Barristers

Michael Sternberg OBE KC

Court

Family Division

Facts

The Chilean mother sought leave to remove a boy aged 6 permanently to Chile. The mother's family lived in Chile and she had been offered employment there. She had some income from a previous marriage, and £145,000 capital with which to set up home. The unmarried father, who had been granted parental responsibility and contact including staying contact, opposed the mother's application. The father had agreed at an earlier stage to an order permitting the mother to take the child to Chile on various conditions relating to contact, but had withdrawn his agreement on the ground that the contact difficulties he had since experienced suggested that the mother was not genuine in her offers of contact in Chile. There was evidence of the mother's resistance to contact and of her failure to keep the father fully informed of her plans. The father argued that he would find it very difficult to enforce a contact order in Chile, and also had concerns that the mother, who had pleaded guilty before magistrates to failing to secure the child's regular attendance at school, was unlikely to ensure that S attended school regularly in Chile.

Held

Held – granting conditional leave to remove the child from the jurisdiction – the child's future clearly lay in the mother's full-time care, and the mother's future clearly lay in Chile where she had family and employment prospects. The risk to the child associated with recent attacks on people identified as being British following the arrest of General Pinochet was low. However, it was appropriate to attach strict conditions to the order, including a requirement that the mother obtain at her own expense the authentication of the contact order in the Chilean Supreme Court. As that process could take 3 to 4 months, and it was not in the child's best interests to delay the planned departure, the court ordered that the mother lodge £135,000 in a deposit account in the name of the father's solicitors, pending notification to the father that the authentication had been implemented. Provided the mother attended to authentication, which was of fundamental importance, the deposit of most of her capital would not cause her hardship. Once the court had proof that the money had been lodged, the mother was to be given leave to remove the child.

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