

P v P (Abduction: Acquiescence)

[1998] 2 FLR 835

06/03/1998

Court

Court of Appeal

Facts

The mother was English and the father was a Cypriot and the family lived in Cyprus. In September 1997 the mother, who was English, left Cyprus with the child and flew to England. She left a note to the father stating 'Woke up early, gone to Larnaca'. The father sought the return of the child under the Hague Convention. The mother asserted that the father consented to or subsequently acquiesced in the removal of the child and that there was a grave risk that the child's return would expose him to physical or psychological harm or otherwise place the child in an intolerable position. In November 1997 Hale J ordered that the child be returned to Cyprus and rejected the mother's objections: see P v P (Abduction: Acquiescence) [1998] 1 FLR 630. The mother appealed against the findings of the judge that the father had neither given his consent nor acquiesced.

Held

Held - dismissing the appeal - the onus was on the mother to establish either consent or acquiescence.

(1) The first task of the court was to find as a fact whether the father subjectively intended to and did give unconditional consent to the removal of the child. On this, the court agreed with the findings at first instance, that this was not a case of a consensual removal, as was evidenced by the mother's clandestine departure from Cyprus.

(2) As to acquiescence, the task of the court was to inquire whether the case could be brought within the exceptions set out in Re H (Abduction: Acquiescence). What had to be established was that one party had so conducted himself as to mislead the other party as to the true state of facts, for in such a case he might not be able subsequently to assert the true facts as against the other. There was an exchange of phone calls between the maternal grandfather and the father which included without prejudice discussions about the child remaining in England. The mother's case was that this communication was evidence which should be taken into account in deciding what the father really wanted or was sufficient to fall within the exceptions. Given that this was an attempt to settle the outstanding dispute, that the husband was clearly indicating that he was negotiating without prejudice, and that no final agreement was reached, there was not such clear conduct as would have indicated to the mother that the father was forsaking his right to seek the return of the child to Cyprus. There was scant evidence that she in fact so understood it. The mother did not satisfy the burden upon her to show that the father unequivocally demonstrated that he was not insisting on a summary return of the child. This was not one of those 'strictly exceptional cases' where justice required that the father should be held to have

acquiesced when, as a fact, he had not intended to do so.

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