

Re T (Staying Contact in Non-Convention Country) (Note)

[1999] 1 FLR 262

12/12/1997

Barristers

Henry Setright KC

Court

Family Division

Facts

T was born in July 1991 and was 6 years old at the date of the hearing. Her mother was English and her father Egyptian. They married in Cairo in 1990, where the mother had been living since 1988; she converted to Islam in 1989. The marriage suffered difficulties from about 1992 but the family continued to live in Cairo until mid-1993 after which date the mother and child divided their time between London and Cairo. In November 1994 the mother left Egypt with the child, ostensibly for a short visit to England but in fact having decided not to return. She and the child then made their home in London; the father visited from time to time and saw the child. After one such visit in July 1996 the father removed the child from England and took her to Cairo without the mother's consent. The mother instituted wardship proceedings immediately. The child was returned to her in August 1996 from New York after the father had taken the child there as part of a holiday and the mother had successfully brought proceedings there under the Hague Convention. There were also proceedings in Cairo, instituted by the mother when the child was taken there by the father, in which the paternal grandmother was ultimately awarded the right to custody in the absence of the mother after the return of the child to England. The father applied in the wardship proceedings for orders as to the child's residence and contact. The essential issues were (1) whether (as the father contended) the child should live in Egypt, or (as the mother contended) England; (2) if the child should live in Egypt, whether the mother should or would return to live there, or whether the child would live there with the father, his second wife and their child; (3) if the court decided that the child should live in England, what contact there should be between the child and her father, in particular whether she should have holiday staying contact with him in Cairo (which the mother strongly resisted, fearing non-return), and, if so, what terms and/or 'mirror orders' were necessary to reduce or exclude the risk of an unlawful retention. In addition to the evidence from the parties and members of the father's family, the court heard evidence from an expert in Egyptian and Arabic law instructed on behalf of the father and read a report from an Egyptian lawyer instructed on behalf of the mother.

Held

Held -

(1) The child should remain a ward of court during her minority or until further order and should reside

with her mother in England.

(2) There should be contact between the child and her father, including holiday staying contact in Egypt, after compliance with a number of very detailed provisions designed to ensure the child's return to England. Such contact was in the child's interests, not only to allow her to enjoy time with her father and extended family (grandparents, cousins, aunt, half-brother) in Egypt, but also to have the benefits of proper knowledge of and exposure to her Egyptian heritage and Muslim religion.

Before contact in Egypt took place, (i) the father, the paternal grandmother and the mother should enter into a notarised agreement including, inter alia, provisions (a) that the child would live with the mother in England, (b) that the child would leave Egypt after any contact in that country and the father would place no obstacle in the way; (ii) the parties should apply for a 'mirror order' in the Cairo court, confirming (a) the child's residence with the mother in London, (b) that the child would be returned to England at the end of any periods of contact there.

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