

P v P (Abduction: Acquiescence)

[1998] 1 FLR 630

24/11/1997

Barristers

Robin Barda

Court

Family Division

Facts

D was born in 1994. His parents were married and lived together in Cyprus. In September 1997 the mother travelled to England with D, without the father's knowledge or express consent, though it was agreed that there had been some discussion of the possibility of the mother and D moving to England. On leaving the family home, the mother had merely left a note to the effect that she had taken D to the seaside. Following the mother's departure, the father sought through his lawyer in Cyprus to negotiate a settlement involving D residing with his mother but having extensive staying contact in Cyprus with his father. The negotiations did not result in a settlement and the father issued Hague Convention proceedings. It was accepted that D had been habitually resident in Cyprus at the time of the removal, however the mother sought to resist the application on the basis, inter alia, that the father had either consented to or acquiesced in the removal of the child.

Held

Held - allowing the application -

(1) As regards the question of consent, it was common ground that consent had to be real, positive and unequivocal, though it was not necessarily the case that an express statement of consent was required to establish a defence under Art 13, nor that such consent necessarily needed to be evidenced in writing. In the present case, the mother's evidence of the conversations she had had with D's father, even if correct, did not amount to the clear and unequivocal evidence of consent required under Art 13. Moreover, had there been such a consent, it was unlikely that the mother would have left Cyprus in the manner which she did.

(2) As to acquiescence, the present case bore all the hallmarks of what frequently occurred in this type of case, namely that the parent whose child had been abducted agreed that the child should remain in the country to which he had been taken, provided that other issues between the parents were resolved. In such cases, only if there was a clear and concluded agreement could it be said that there was clear and unequivocal conduct which amounted to acquiescence under Art 13. In the present case, there had been no such agreement, and acquiescence was not established as a defence accordingly.

Per curiam: it would be unfortunate if parents in this situation were deterred from seeking to negotiate sensible arrangements for the future upbringing of the child concerned for fear that such negotiations should be taken as evidence of acquiescence at a later stage. Such negotiations were, on the contrary, to be encouraged. The fact that such negotiations had taken place should not necessarily lead to the conclusion that a parent whose child had been abducted was content for that child to remain in the country to which he had been removed.

Permission

Lawtel 