

Re C (Abduction: Consent)

[1996] 1 FLR 414

27/07/1995

Barristers

Kate Branigan KC

Court

Family Division

Facts

The father was American and the mother was English. Their children were of dual nationality. The mother came to England with the children for holidays. The parents separated in 1994 for a period of time and in 1995 the mother flew to England with the children and remained. The mother intended to settle permanently in England. The father stated that he had only agreed to the mother coming to England with the children for a holiday and he applied for the return of the children under the provisions of the Child Abduction and Custody Act 1985 and the Hague Convention on the Civil Aspects of International Child Abduction 1980.

Held

Held – refusing the father’s application – if the father did not consent to the mother’s permanent removal of the children prior to her coming to England, then there was nothing in his subsequent conduct or in his delayed action which could possibly constitute acquiescence. The sole effective issue in this case was consent (see p 416A-F below). The Convention intended that once it had been shown that there had been a removal from or retention away from the State of habitual residence, which was prima facie in breach of rights of custody, and consent was put in issue, then the onus shifted firmly onto the person who opposed the return of the child to prove that the removal or retention was by consent (see p417F below). The means of proof would vary and might include oral evidence from the parties. It was possible in an appropriate case to infer consent from conduct and the issue of consent needed to be proved on the balance of probabilities although the evidence in support of it needed to be clear and cogent (see pp 418G-419D below). The effect of consent under Art 13(a) was simply to open the door to the exercise of discretion (see p 423B-C below).

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