

Note H v H (Residence Order: Leave to Remove from Jurisdiction)

[1995] 1 FLR 529

08/07/1994

Barristers

Michael Sternberg OBE KC

Court

Court of Appeal

Facts

The child was born in England in 1990 of a Swedish mother and an English father. The matrimonial home was in England. From September 1992 there was some trouble in the marriage. The mother took the child to Sweden and began divorce proceedings. Thereafter there was some attempt at reconciliation which failed. In June 1993 the father obtained an ex parte residence order. He also took proceedings under the Hague Convention as a result of which the Swedish court ordered the mother to return the child to England. After some delaying tactics, she returned to resume residence in the matrimonial home pending a determination of the applications before the judge. In October 1993 the judge granted the mother a residence order and gave her leave to remove the child from the jurisdiction. The father appealed. He contended, inter alia, that: (1) the judge should have applied the Children Act 1989 criteria and had been wrong to hold that the earlier authorities were binding on him; (2) the judge had failed to apply specifically the welfare checklist in s 1(3) of the Act to the issue of removal from the jurisdiction, having applied it to the question of residence; and (3) the judge had taken no account of the damage and effects on the child of separation from the applicant and his environment.

Held

Held – dismissing the appeal – the Children Act 1989 had not altered the underlying factors which needed to be taken into account in welfare considerations but merely emphasised that the checklist in s 1(3) was to be applied, though not necessarily specifically to every issue. It was clear that the judge had taken all the relevant factors into account, including the distress to which the child might be subjected by his removal from the jurisdiction. He had properly carried out the necessary balancing exercise and had reached a conclusion which could not be faulted.

Permission

Reproduced with kind permission from Justis 