

MC (Claimant) v SC (Defendant) & CC & ORS (CHILDREN) (Interveners) (2008)

[2008] EWHC 517 (Fam); [2008] 2 FLR 6

14/03/2008

Barristers

Teertha Gupta KC
Private: David Williams QC

Court

Family Division

Summary

Where the separate representation of children would add enough to the court's understanding of the issues that arose under Hague Convention proceedings to justify the intrusion, expense and delay that might result, their application to be joined as parties to the litigation was allowed.

Facts

The applicant children (C, O, D and P) applied to be joined as parties to Hague Convention and inherent jurisdiction proceedings instigated by the claimant father (F) following their removal from France to the jurisdiction of England and Wales by the defendant mother (M). C was aged 16, O was 13, D was 11 and P was 9. The family had moved to France, but the relationship between F and M deteriorated and the French court authorised M's pursuit of a divorce the following year. F then left the French property to live in Spain before returning to rent accommodation near to the family. A year later F went to the former family home to exercise contact with the children and found it empty. F issued the instant proceedings, asserting that at the time of their removal by M the children's habitual residence was in France and that they had been wrongfully removed. M argued that the move to France had been for a temporary purpose and that the children's habitual residence remained in England. M raised defences under the Hague Convention on the Civil Aspects of International Child Abduction Art.13, including the objections of each of the children to their return to France. The children sought to be represented separately in the proceedings. Their legal representative provided an affidavit detailing her instructions from them, in which she concluded that all four children were articulate and of an age and maturity when it was appropriate to consider their views, and that they were able to give instructions and wished to do so.

Held

HELD: The test to be used by the courts in Convention proceedings was whether separate representation of the child would add enough to the court's understanding of the issues that arose under the Hague Convention to justify the intrusion, the expense and the delay that might result, M (Children) (Abduction: Rights of Custody), Re (2007) UKHL 55, (2008) 1 AC 1288 applied. C's position was clear. The Convention did not apply to him because of his age and different legal principles would be applied by the court when

considering F's application for him to return. Similarly the question whether C should be separately represented within the proceedings would be answered by the application of a different test from that relating to O, D and P, who were subject to the terms of the Convention. In the circumstances it was in C's best interests to be a party to the proceedings and that he should be entitled to instruct the solicitor of his own choice. In respect of O, D and P, their separate representation would add to the court's understanding of the issues that arose under the Convention. There would be little expense and delay, having regard to the representation of C; indeed, their guardian ad litem could choose to use the same solicitor. As to intrusion, on the facts of the instant case, it did not outweigh the benefit to be obtained from separate representation. It was directed that C, O, D and P were to be joined as parties and that the three younger children were to be represented by a guardian or litigation friend.

Application granted

Permission

Lawtel 