

H v (1) D (2) X & Y (By Their Guardian AD Litem, O) (2007)

[2007] EWHC 802 (Fam)

04/04/2007

Barristers

Henry Setright KC
Private: Marcus Scott-Manderson QC
Joy Brereton KC

Court

Family Division

Summary

An English court had correctly exercised its inherent jurisdiction to protect children that were physically present in the country from harm following the attempted abduction of one of the children by their father.

Facts

The court was required to determine issues of jurisdiction, residence and contact concerning the applicant mother (H), the first respondent father (D), and their children the second and third respondents (X and Y). H, a British national, and D, an American national, had lived in Venezuela with X and Y. H moved to England with X and Y and applied for divorce. D started proceedings in England under the Hague Convention on the Civil Aspects of International Child Abduction 1980 for the return of X and Y. Following undertakings by D, H voluntarily returned to Venezuela with the children, where custody proceedings were commenced. D had been having regular contact with the children until H was shot and injured by a hired gunman. She believed D was responsible and contact ceased. A Venezuelan court gave her permission to return with the children to England for a limited period, but she remained in England in breach of the order and commenced wardship proceedings. X and Y were made wards of court and D was ordered not to have contact with the children or remove them from their mother's care, but he maintained telephone contact. D insisted that he did not accept the jurisdiction of the English courts in the wardship proceedings and that there were already proceedings in Venezuela concerning custody. D then attempted to abduct Y. H, X and Y were removed to a safe house on the recommendation of the police. A CAF/CASS report recommended that X and Y remain wards of court with a residence order in favour of H with no direct or telephone contact with D.

Held

HELD: There was an inherent jurisdiction in the English court to protect children from harm that were physically present within the jurisdiction. It could be exercised irrespective of the proceedings in which the need to protect the children arose and even where there were concurrent proceedings in another

territorial jurisdiction. With respect to X and Y's physical presence in England, the attempted abduction and their presence in a safe house, it was clear that they were in need of protection and that their safety required the English court to exercise its jurisdiction. An order was made for X and Y to remain wards of the court and in the care of H. D was prevented from communicating with X and Y or going within 100 meters of where they lived or went to school.

Judgment accordingly