

A (Applicant) v H (Respondent) & (1) Registrar General for England & Wales (2) Secretary of State for Justice (Interveners) (2009)

[2010] 1 FLR 1; [2009] EWHC 636 (Fam)

27/03/2009

Barristers

Henry Setright KC
Private: Marcus Scott-Manderson QC
Catherine Wood KC
Teertha Gupta KC

Court

Family Division

Summary

A father had failed to establish parental responsibility or inchoate rights of custody in respect of a child and so he had no rights of custody within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction 1980 in respect of that child who had been removed from jurisdiction by the mother.

Facts

Following a request by a Hague district court, the instant court was required to determine whether the removal of a child (C) from the jurisdiction of England was wrongful within the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.3. C's father (F) was a British national and the mother (M) was from the Netherlands. F and M went through a Muslim marriage ceremony. C was born thereafter. F registered C's birth and he was the named father on the birth certificate. M was absent during the registration. Later M took C to the Netherlands where they both remained. F commenced proceedings in the Netherlands seeking C's return. M denied that F had parental responsibility or that he acquired the rights of custody in respect of M, but F relied on the fact that his name appeared in the birth certificate. He also claimed that he had rights of custody pursuant to the Legitimacy Act 1976 s.1 or inchoate rights of custody. F also relied on a combination of factors apparently giving rise to rights of custody, including the religious marriage and the rights conferred on him by Muslim law, cohabitation, the birth registration, a representation by the registrar that F could register his name on an agreed basis, and the opportunity for him to have obtained parental responsibility had he not been misled. The issues were whether (i) F had parental responsibility in respect of C; (ii) the circumstances, even if they did not under domestic law give rise to parental responsibility, were capable of amounting to rights of custody when considered in the Hague Convention terms; (iii) F could rely on estoppel as a basis for arguing that the action of the registrar meant that he did not seek agreements or orders that would have given him

parental responsibility; (iv) F had inchoate rights of custody; (v) F's rights under the European Convention on Human Rights 1950 were breached.

Held

HELD: (1) As was accepted the effect of s.1 of the 1976 was to treat the child of a void marriage legitimate, resulting in the father having parental responsibility, provided that one or both parents reasonably believed the marriage was valid when the child was conceived. F did not believe that he had entered into a valid marriage in terms of English law so C was not the child of a void marriage. The marriage was a non marriage, *Gandhi v Patel* (2002) 1 FLR 603 Ch D applied. Parental responsibility for an unmarried father could only be obtained by complying with the statutory provisions so F had to bring himself within the provisions of the Births and Deaths Registration Act 1953 s.10. He could not do so since M had not attended with him and signed the birth register and he had not had any other prescribed documents with him. The instant was not a case where the wrongful description in the birth certificate gave F rights which, if the correct information had been given, he would have had. F could not have been named as the father of C once he had decided to attend the registration office alone without informing M. (2) Article 3 of the Hague Convention was not exhaustive of how rights of custody could arise. The factors relied on by F did not give rise to custody rights, *D (A Child) (Abduction: Rights of Custody)*, Re (2006) UKHL 51, (2007) 1 AC 619 considered. He was not misled by the registrar. Both F and M were aware that the Muslim marriage did not give them the same rights which a ceremony complying with English law would do. Their cohabitation was brief and so could not give rise to a presumption of marriage and thus legitimacy by that route, *M v M (Divorce: Jurisdiction: Validity of Marriage)* (2001) 2 FLR 6 Fam Div and *Chief Adjudication Officer v Bath* (2000) 1 FLR 8 CA (Civ Div) considered. The wrongly issued birth certificate could not assist F. Further there was no guarantee that if F had taken other steps it would have necessarily resulted in the grant of parental responsibility which was not open to challenge later. (3) On the facts, there was no way F could acquire parental responsibility other than by statutory provision. Rights of custody could arise only by that route or through inchoate rights. Estoppel and legitimate expectations were not concepts that enlarged the scope of either category, *Amalgamated Investment & Property Co Ltd (In Liquidation) v Texas Commerce International Bank Ltd* (1982) QB 84 CA (Civ Div) considered. (4) F did not acquire rights of custody by sharing the care of C with M before M's departure or as a result of any other factors. There was no abandonment of care to him nor did he have the right to determine where C lived. M had not recognised any rights of F, *H (Child Abduction) (Unmarried Father: Rights of Custody)*, Re (2003) EWHC 492 (Fam), (2003) 2 FLR 153 distinguished. In the circumstances, F did not have inchoate rights of custody, *W (Minors) (Abduction: Father's Rights)*, Re (1999) Fam 1 Fam Div applied, and *C (Child Abduction) (Unmarried Father: Rights of Custody)*, Re (2002) EWHC 2219 (Fam), (2003) 1 WLR 493, *J (A Minor) (Abduction: Custody Rights)*, Re (1990) 2 AC 562 HL and *B (A Minor) (Child Abduction: Consent)*, Re (1994) 2 FLR 249 CA (Civ Div) considered (5) It was unclear what aspect of F's or C's human rights were being interfered with other than the failure to grant F parental responsibility and the failure to secure a means where by an abducted child could be returned. It was not a grievance which the instant court could remedy.

Permission

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