

Re F (Abduction: Removal outside jurisdiction)

[2008] EWCA Civ 854

22/07/2008

Barristers

Private: Hassan Khan

Court

Court of Appeal

Summary

Where immigration applications or proceedings were ongoing at the same time as an application for the summary return of children to the country they had come from, it was highly desirable that there should be communication and collaboration between the secretary of state and the judge who was dealing with the latter application.

Facts

The appellant father (F) appealed against an order of the judge discharging his previous order directing the summary return of F's two children to Mozambique. F, who was born in Lebanon, had worked for a number of years in Africa. He married the respondent (M), who was born in the Democratic Republic of Congo (the DRC), in 1998. Their children were born in 1999 and 2002. The family lived in various African countries, relocating to Mozambique in 2003 or 2004. In 2005, M abducted the children and brought them to the United Kingdom. She claimed asylum but her application was refused. She challenged that refusal in the courts, a process which came to an end in 2006. Also in 2006, F brought proceedings seeking the summary return of the children to Mozambique. The judge granted the application. However, the children's return was delayed after M changed her mind several times about accompanying them. The case was returned to the judge's list, with M arguing that there were welfare considerations which needed to be investigated before a return could be ordered. The judge discharged his previous order, his essential reasoning being that in the intervening months the children had become more settled in their routines and that therefore the paramount consideration of welfare no longer indicated an order for summary return. F argued that the judge had been wrong to discharge his previous order.

Held

HELD: (1) It would be appropriate to allow the appeal on the grounds of fresh evidence and the wider appreciation that it gave of the insecurity of M's presence within the jurisdiction. A representative of the Treasury Solicitor had attended court and revealed that a recent application by M under the "Legacy Exercise" had been refused, that she was subject to administrative removal and that the current moratorium on removals to the DRC might come to an end in four months' time. M had no realistic prospect of escaping or much further deferring the family's removal to the DRC. The consequence was that settled future residence for the children in the UK ceased to be a realistic option. The realistic

choices were between the DRC and Mozambique. Mozambique was the infinitely preferable option, and a summary order avoided the risk of forcible deportation. The judge's original order would therefore be restored. (2) In these difficult cases where the power of the judge in wardship proceedings and the power of the secretary of state interfaced, it was highly desirable that there should be communication and collaboration between the two parties. That had been absent at the trial stage, with the result that each party ended up deferring to the other. The appeal had achieved the essential sharing of information.

Permission

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