

M v M (2007)

[2007] EWHC 1404 (Fam); [2007] 2 FLR 1010

14/06/2007

Barristers

Teertha Gupta KC
Judith Murray KC

Court

Family Division

Summary

The mother had proved that the father had consented to her bringing their children from Greece to England and remaining here on her own, and in the light of that consent and of the facts of the case, it would not be right for the court to exercise its discretion to order the return of the children.

Facts

The applicant father (F) applied under the Hague Convention on the Civil Aspects of International Child Abduction for an order directing the immediate return of his two sons, who were aged 10 and 6, to Greece. The family had been living in Greece. In January 2007, the respondent mother (M) brought the children to England. It was accepted that she had done so with F's consent. The issue was the extent of that consent. M's case was that F had never intended to leave Greece; that she had been saying for some time that they should divorce; that shortly before she left Greece, he had agreed to a divorce; and that there was no agreement or understanding that he would come later to England. F's case was that it had always been intended that he should join M and the children in England, and that M had acted in breach of that agreement or understanding by issuing divorce proceedings the day after she arrived in England. It was common ground that, if F's account was correct, he had not consented to the children leaving Greece within the terms of the Convention, and that, if M's account was correct, he had consented in Convention terms to their leaving.

Held

HELD: Having regard to the evidence given by the parties, M had proved that F had consented to her bringing the children to England and remaining here on her own. In the light of that consent and of the facts of the case, it would not be right for the court to exercise its discretion to order the return of the children. The court was not aware of a case where its discretion had been exercised to order the return of a child where consent to his removal had been proved. The reasons were not hard to imagine. It amounted to the consenting party being given the option to change their mind after the other party had acted in reliance on the consent. There could be circumstances where that might be appropriate, but they did not arise in the instant case.

Application refused

Permission

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