

Re RC and BC (2008)

(2009) 1 FLR 574

28/07/2008

Barristers

Teertha Gupta KC

Court

Family Division

Summary

The courts in England and Wales had no jurisdiction to entertain an application under Regulation 2201/2003 art.11(7) (Brussels II Revised) where a foreign court had made a non-return order not on the basis of the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.13, but rather on the basis of a finding that the retention of the child in question was not wrongful in terms of art.3.

Facts

The applicant mother (M) invited the court to examine the issue of custody of her son (R) pursuant to Brussels II Revised art.11(7). R was the son of M and the respondent (F). M and F were both Portuguese nationals, as were R and his younger sister (B). The family had moved to England in 2004, but some 18 months later, following the breakdown of M and F's relationship, F had taken R to Portugal and had not returned him. M applied under the Child Abduction and Custody Act 1985 for R's return and began proceedings under the Children Act 1989 to safeguard B's position. R was declared a ward of court and an order was made for his immediate return to M. Upon M's request for a return order under the Hague Convention on the Civil Aspects of International Child Abduction 1980, the Portuguese court ordered a welfare investigation and declined to make an order for R's return to the United Kingdom, finding that there had been no wrongful retention of R by F. M began the instant proceedings in England. The issue was whether the court had jurisdiction to entertain M's application given that the Portuguese court's non-return order was not based on art. 13 of the Hague Convention but on a finding that F's retention of R was not wrongful in terms of art.3 of that Convention.

Held

HELD: M was not entitled to apply to the court under Brussels II Revised art.11(7). Article 11 supplemented practice and procedure in Hague abduction cases between Member States. It was beyond argument that the document transmission requirements imposed by art.11(6) on the receiving state, and the notification and submission invitation requirements on the court of the home state only arose where a court had issued an order on non-return pursuant to art.13 of the Hague Convention. It was only when the non-return order was made pursuant to art.13 of the Hague Convention that the home court was competent to examine the question of the custody of the child as envisaged by art.11(7) of Brussels II

Revised. M's application was therefore struck out as serving no useful purpose.

Application refused

Permission

Lawtel 