

S v Slough Borough Council & Ors (2008)

[2008] EWHC 3013 (Fam)

14/11/2008

Barristers

Alex Verdan KC
Henry Setright KC
Private: Marcus Scott-Manderson QC
Teertha Gupta KC
Mark Jarman KC

Court

Family Division

Summary

A mother could not exercise custodial rights under the Hague Convention on the Civil Aspects of International Child Abduction 1980 where she had been aware that her child was travelling to the United Kingdom in order to be exploited. The court also gave guidance on what local authorities should do when receiving a foreign child, in need of special protection, into care.

Facts

The applicant mother (M), a Romanian national, applied for the return of her child (E) to Romania under the Hague Convention on the Civil Aspects of International Child Abduction 1980. E was 13 years old and had left Romania with the consent of M and father (F). She travelled to the United Kingdom and, once there, stayed with an aunt and uncle. E was made to sell newspapers and give her earnings to her aunt. Following an investigation by police into people trafficking, E was taken into protective care and placed with foster parents by the local authority. When E's parents were informed of what had happened, F came to the UK seeking to have E returned to him. He untruthfully told the authorities that he had accompanied E when she arrived in the UK and had only left her to return to Romania for a funeral. The local authority applied for and was granted an interim care order which was renewed against the wishes of E's parents. F was later convicted of offences relating to his involvement in E's exploitation and sentenced to a term of imprisonment. M instigated the instant proceedings under the Hague Convention for E's immediate return to Romania. The court had to consider whether (i) M had rights of custody under the Hague Convention; (ii) if so, was she exercising them; (iii) the retention of E by the local authority was in any event wrongful within the terms of the Hague Convention; (iv) the parents consented to E coming to England and, if so, whether it was still operative when the local authority acquired the interim care order; (v) the return of E to Romania would expose her to a grave risk within the meaning of that term within the Hague Convention; (vi) the court should, in any event, exercise its discretionary powers to order E's return to Romania.

Held

HELD: (1) When considering M's custodial rights under the Hague Convention, it was important to have regard to her state of knowledge in relation to E's anticipated activities in the UK. The local authority had, in that regard, successfully discharged the burden of proving that M did know that E was going to earn money selling newspapers. On that basis, there was no breach of M's rights of custody attributed to her by Romanian law. Such rights did not include the right to commit a criminal offence in Romania or abroad by exploiting E. There could be no breach of a right that did not exist and, if it did exist, only did so if used lawfully. (2) If that conclusion was wrong and there was an exercise of rights of custody by the parents, as the exercise was criminal, it was an unlawful exercise of those rights by the parents. That meant that the actions of the local authority in retaining E were not in breach of the parents' rights of custody. Moreover, it was difficult to see how an exercise that was not only unlawful but criminal could be an exercise of rights of custody. For those reasons, M's application was destined to fail. (3) The court gave guidance in relation to what steps a local authority should follow having received a child, in need of special protection, into care, regardless of whether they were accompanied by an adult. (4) Finally, Regulation 2201/2003 art.20 provided the local authority with additional authority to retain E in the way that it did. If there had been a breach of custody rights, art.20 of the Regulations would have prevented it being wrongful so long as the case was urgent. Such authority ended when the local authority had taken the measures it considered appropriate. Thereafter, the court had the additional sanction of art.13(b) of the Hague Convention where a question of grave risk arose. Those were sufficient measures for a child's protection. (5) (Obiter) Where one parent consented to their child being taken abroad by the other parent and then discovered that the child was in the care of a local authority having been exploited without the other parent's knowledge there was no bar to that parent bringing a Hague Convention application even though the child was properly in the care of a local authority. Ongoing care proceedings were not a bar to the instigation of a Hague Convention application by such a parent.

Application refused

Permission

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