

Re M (Children) (2007)

(2008) 1 FLR 699; [2007] EWCA Civ 1059

31/07/2007

Barristers

Henry Setright KC
Judith Murray KC

Court

Civil Division

Summary

A finding that a spouse's application for his children to be returned under the Hague Convention 1980 was motivated by a desire to frustrate ancillary relief proceedings would be a strong reason for a judge to refuse to exercise his discretion to order the children's return.

Facts

The applicant father (F) sought permission to appeal against a decision that the removal of his children (C) from Greece to England by the respondent mother (M) had not contravened the Hague Convention on the Civil Aspects of International Child Abduction. F was Greek and M was English. Initially the family lived in England, but later moved to Greece. F and M decided that C should go to school in London, and so M and C moved back to England. M filed for divorce and brought proceedings for ancillary relief. In response, F sought C's return under the Hague Convention. The judge found that as F had consented to the removal, M's defence under art.13(a) was made out and he declined to exercise his discretion to order C's return to Greece. F submitted that the exercise of the judge's discretion had been so perfunctory as to amount to no discretion at all.

Held

HELD: A judge was not to be criticised if he had dealt briefly with brief or non-existent submissions. Before the judge, F had concentrated his case on the issue of consent and had not really addressed the issue of how the judge should exercise his discretion if he found that F had consented. Moreover, the judge had found that F's motivation for pressing for C's return was to try to frustrate M's proceedings for a financial award. That finding was in itself a strong, if not decisive, explanation for the judge's discretionary refusal of return.

Application refused

Permission

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