

Re M (A Child) (2007)

(2007) 2 FLR 72; [2007] EWCA Civ 260

27/03/2007

Barristers

Henry Setright KC

Private: Marcus Scott-Manderson QC

Court

Civil Division

Summary

An order for the return of a child to Serbia was quashed in circumstances where the child had a valid reason for her objection to being returned and where the general welfare considerations militated strongly against the making of such an order.

Facts

The appellant mother (M) appealed against an order for the return of her eight-year-old child (C) to Serbia pending substantive proceedings between M and C's father (F) in Serbia relating to C's welfare and care. M and F had lived in Serbia with C until they separated. M alleged that F had been violent towards her throughout their relationship. M was awarded custody of C, which F sought to contest. M then brought C to the United Kingdom and F issued proceedings for C's return to Serbia under the Hague Convention on the Civil Aspects of International Child Abduction 1980. M initially consented to return on the basis of undertakings from F that C would remain in her care. She subsequently withdrew consent on the basis that C had made it clear that she did not wish to go back to Serbia, and she invited the court to obtain a CAFCASS report on C's needs. However, the court refused to amend the order to which M had consented and M and C returned to Serbia. M alleged that she was then subjected to an escalating campaign of harassment by F, which included the planting of drugs in her car and the involvement of the Serbian police. M left Serbia with C and brought her to the UK. The judge refused to allow oral evidence from the parties and made no reference in his judgment to the defence under Art.13 of the Convention of C's objections to her return. M submitted that the judge had wrongfully failed to take C's objections to her removal into account and that C's objections should have led the court, taking into account her age and level of maturity, to exercise its discretion against a return order. M also submitted that the judge had carried out an insufficient factual analysis in relation to the issue raised by the planting of the drugs on the basis that regardless of who was attempting to target M, there was a real danger that M might be taken into custody, which in turn gave rise to a clear risk of harm to C. M further submitted that the judge had erred in not allowing the oral evidence to resolve any aspects of the evidence in relation to which he retained doubts.

Held

HELD: (1) Where a child's objections were raised by way of defence, there were three stages in the court's consideration. The first question was whether or not the objections to return were made out. The second was whether the age and maturity of the child were such that it was appropriate for the court to take account of those objections. Assuming a positive finding in that respect, the court had to ask whether or not it should exercise its discretion in favour of retention or return, *T (Children) (Abduction: Child's Objections to Return)*, Re (2000) 2 FLR 192 CA (Civ Div) applied. The instant court had to consider those principles on the basis of the evidence and taking into account the CAF/CASS report. On that basis it was quite clear that C had expressed strong objections to returning to Serbia and had a real and understandable fear of return to possible involvement with the Serbian police and fear of being parted from M as a result. Her age and maturity were such that her clearly voiced objections were required to be taken into account. (2) M had plainly been the victim of persistent efforts to incriminate her in relation to drug-dealing and the judge should not have been in any doubt of that fact. These various matters required express consideration by the judge but unfortunately they had not received it. The instant court was of the view that, contrary to the implicit findings of the judge, C had a valid reason for her objection to being returned and the general welfare considerations of the case militated strongly against making an order for return. This was an exceptional case and was not a situation in which C could be adequately protected from the eventualities that she feared by the undertakings offered by F. (3) The judge was well within the ambit of the discretion that he undoubtedly possessed in relation to the admission of oral evidence, *W (A Child) (Abduction: Conditions for Return)*, Re (2004) EWCA Civ 1366, (2005) 1 FLR 727 applied. Oral evidence from the parties in such cases was necessarily a rarity if the speedy and summary nature of the proceedings was to be preserved.

Appeal allowed

Permission

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