

Re F (A Child) (Abduction: Child's Wishes) (2007)

(2007) 2 FLR 697; [2007] EWCA Civ 468

27/03/2007

Barristers

Henry Setright KC

Private: Marcus Scott-Manderson QC

Court

Civil Division

Summary

When making a location order in international child abduction proceedings, a judge had failed to discharge her obligation under Regulation 2201/2003 art.11(2) to give the child an opportunity to be heard.

Facts

The appellant mother (M) appealed against a location order made in favour of the respondent father (F) in respect of their seven-year-old daughter (D). F, a Spanish national, and M, a national of the United Kingdom, had lived together in Spain with D. After their separation, arrangements were made for D to spend Christmas in the UK with her maternal grandmother and M. In the event, D remained with her grandmother and enrolled into a local school. After a delay of nine months, F applied for D's return under the Hague Convention on the Civil Aspects of International Child Abduction. M claimed that the delay had shown F to have acquiesced to D's retention in the UK under Art.13 of the Convention. The judge disagreed and ordered D's return to Spain. At no point during the proceedings was evidence as to D's opinions and feelings put before the judge. M submitted that the judge had erred in failing to discharge her obligation under Regulation 2201/2003 art.11(2) to give D the opportunity to be heard. F contended that, given D's age, the judge had the discretion to decline such evidence.

Held

HELD: (1) It was surprising that the novel obligation imposed by art.11 of the Regulation, and highlighted by recent authority, *D (A Child) (Abduction: Rights of Custody)*, *Re (2006) UKHL 51*, (2007) 1 AC 619 applied, had not focussed more attention on the steps that needed to be taken to ensure that in every case the art.11 obligation was not overlooked. The obligation to hear the child had not, however, to override the obligation in the same article to conclude the proceedings within six weeks of issue. The judge had erred in not ensuring that D was given the opportunity to be heard during the proceedings, as was her obligation under art.11(2). It was essential that the question of how and when the court heard from a child in such matters was settled at the first opportunity. The case was accordingly remitted for further consideration. (2) (Per curiam) In future, the question of how and when the court would hear a

child, in discharge of its obligations under art.11(2) of the Regulation, had to be considered at the first directions appointment and any subsequent direction appointment had to ensure that that central ingredient of the case was never out of the spotlight.

Appeal allowed

Permission

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