

Re M (A Child) (2006)

(2006) 2 FLR 1180 : [2006] EWCA Civ 630; Times, July 3, 2006 : Independent, May 24, 2006

18/05/2006

Barristers

Henry Setright KC

Private: Marcus Scott-Manderson QC

Court

Civil Division

Summary

The judge had erred in exercising his discretion not to make an order returning a child to France where the policy of the Hague Convention on the Civil Aspects of International Child Abduction 1980 and Council Regulation 2201/2003 outweighed the fact that the child's objection to return was made out.

Facts

The appellant mother (M) appealed against the dismissal of her claim for the return of her 14-year-old son (S) to France under the Child Abduction and Custody Act 1985. M, S and the father (F) were French. M and F were not married but had had a long relationship before they separated. After contested proceedings the French court made an order for joint parental responsibility, with residence to M and contact to F. The parties were prevented from leaving France with S without the other's express consent. In breach of the order F and S had travelled to the United Kingdom. M issued proceedings under the Child Abduction and Custody Act 1985. The proceedings took nearly five months to be heard and in the meantime the French court granted sole parental authority to M. The judge dismissed the claim on the basis that the evidence established that S's objection to return had been made out and that the discretionary balance came down against a return order. M submitted that the judge had failed to give sufficient weight to the French court process, the French court being fully seised in the welfare case to settle S's future.

Held

HELD: (1) The judge had erred in the exercise of his discretion. On the application for return the judge had to weigh only the nature and strength of S's objection against the policy of the Council Regulation 2201/2003 and the fact that the essential welfare investigations and decisions had to be taken in France. S's objections would be met by the protective measures available in France. The judge had been wrong to give weight to S's misconception that he would not receive a fair hearing in France. The judge had wrongly taken into account welfare considerations that Art.11(3) of the Regulation was designed to eliminate from the account. If judgment had been given in accordance with the time limits in the Regulation, education and disruption issues could hardly have come into the reckoning. Nowhere did the

judge refer to the requirement for maximum expedition or to the extent to which Art.11(3) had been breached. The policy of the Hague Convention on the Civil Aspects of International Child Abduction 1980, buttressed by the provisions of the Regulation, outweighed the fact that S's objection to return was made out. For S's defence under Art.13 of the Convention to prevail over the policy of the Convention there had to be something in the facts that made the case exceptional. (2) Administrative procedures should be implemented in the Family Division to ensure compliance with the timetables under the Regulation.

Appeal allowed.

Permission

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