

Re E (A Child) (2005)

(2005) 2 FLR 759; [2005] EWHC 848 (Fam)

27/05/2005

Barristers

Henry Setright QC

Court

Family Division

Summary

In summary proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980, it was not appropriate for an English court to go behind the decision of a competent court of another contracting state dealing with the custody of a child where the terms of the foreign court's order, relied on as establishing custody rights under the Convention, were clear, apt for the purpose, and had not been appealed.

Facts

The applicant father (F) sought an order for the return of his child (E) to Spain by the respondent mother (M). Following F and M's separation in Spain, M had taken E and set up home in England. In due course, a Spanish court made a provisional measures order directing that E be returned to reside with F in Spain. M successfully applied for E to remain with her until the end of the school term but thereafter failed to return E contrary to the provisional order. F brought proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980 on the basis that M had wrongfully retained E. M submitted that the wrongful retention relied upon was the act of keeping E in England rather than returning her to Spain at the end of the school term. She maintained that the burden was on F to show that such removal was a breach of rights of custody attributed to a person, institution or other body, by the law of the child's country of habitual residence prior to retention. To this end, M contended that F did not have Convention rights of custody in respect of E in that he did not have parental responsibility for E under English law and had not acquired any inchoate rights of custody.

Held

HELD: (1) In summary proceedings under the Convention, it was not appropriate for an English court to go behind the decision of a competent court of another contracting state dealing with the custody of a child where the terms of the foreign court's order, relied on as establishing custody rights under the Convention, were clear, apt for the purpose, and had not been appealed. Such an exercise would run counter to the whole ethos and purpose of the Convention. (2) The rights of custody which F sought to enforce were rights which had been established by the provisional order of the Spanish court which had remained seized of the case ever since, *JB (Child Abduction: Rights of Custody: Spain), Re* (2003) EWHC 2130 (Fam), (2004) 1 FLR 796 explained. The facts showed that M had agreed to the Spanish court being the court of appropriate jurisdiction in matters relating to the custody of E and E's return to Spain was

made upon the basis of such concession. (3) It was clear that the provisional order was one which conferred rights of custody upon F. Its terms indicated that E was due to be returned to him in Spain, which position M had understood. M had breached the provisional order. An order was granted for the return of E to Spain.

Permission

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