

W v W (2004)

(2004) 2 FLR 499; [2004] EWHC 1247 (Fam)

28/05/2004

Barristers

Henry Setright KC

Court

Family Division

Summary

Domestic violence by a father to a mother was not of itself enough to support the existence of a grave risk of harm to a child of the kind referred to in the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.13(b).

Facts

The applicant father (F) applied for the return of his daughter (D) to South Africa, the country of her habitual residence, following her removal by the respondent mother (M). F and M were both South African-born and began cohabiting in 1993. The following year D was born. M maintained that F had been habitually abusive towards her, including violence and demeaning sexual practices. She made a number of attempts to separate from F, including leaving South Africa with D. Nevertheless in 1998 M agreed to marry F, on her own account to ensure her continued contact with D. From December 1998 F and M lived in South Africa with D. In January 2004 M took D to England, ostensibly without F's knowledge or consent. M argued that D would suffer a grave risk to her physical and psychological health within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.13(b) if she was returned to South Africa and that D herself objected to returning.

Held

HELD: D's removal from South Africa was contrary to the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.3 . As less than 12 months had elapsed between that removal and the commencement of the instant proceedings, there was only discretion not to return D if M was able to establish her defence under art.13(b) . Domestic violence by a father to a mother was not of itself enough to support the existence of a grave risk of harm to a child of the kind referred to in art.13(b) because it was presumed that the courts of the country of habitual residence would assist a battered wife and protect her. Moreover, the mother's distress was not the relevant test, it was only the possible impact on the child that was important. The art.13(b) threshold was very high and had not been crossed in the instant case. There was no real evidence of D's grave distress about her own position upon return. Although D had expressed an objection to returning to a Children and Family Court Advisory and Support Service officer, her objection was more to do with her concerns about M and she was prepared to return provided it was with M. D's objections were not overriding. However, D and M required protective

measures to be in place before they had to return. Accordingly, provided there was full compliance with conditions relating to D and M's living arrangements, financial provision and South African legal proceedings, D should return to South Africa.

Permission

Lawtel 