

Re W (A Child) (2004)

(2005) 1 FLR 727; [2004] EWCA Civ 1366

06/07/2004

Barristers

Henry Setright KC

Court

Court of Appeal

Summary

A Family Court judge had dealt with the case impeccably and in accordance with the authorities, in ordering pursuant to the Hague Convention, the return of a child to her country of habitual residence.

Facts

A mother (M) appealed against the decision of a judge to allow an application by a father (F) for the summary return of their child to South Africa. M and F were South African and began to co-habit in 1993. Their only child (S) was born in 1994. Their relationship was volatile and M unilaterally removed S from South Africa twice. On both occasions M initially brought S to the United Kingdom. The second removal resulted in M and F making an agreement in Australia for the shared parenting of S. Pursuant to that agreement M left S in F's care for an agreed period. At the end of that period F refused to release S into M's care and instead took flight across several African countries. That unilateral removal of S by F was ended by M and F agreeing to marry and to attempt a new life together in the United Kingdom. M and F moved to the United Kingdom and lived there for six months before deciding to return to South Africa. In January 2004 M unilaterally removed S from South Africa to the United Kingdom. F commenced proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980 and applied to the United Kingdom Central Authority for the return of S. M raised two defences to her removal of S. Firstly that under Art.13(b) of the Convention the return of S would expose S to grave risk and secondly that S, being of sufficient maturity, objected to the return. The judge was satisfied on the written evidence before her that, inter alia, the Art.13(b) threshold of grave risk to S was not met and ordered her return to South Africa subject to a number of conditions. In the course of her judgment the judge aired certain misgivings that she had with the operation of the Convention. M appealed. The mother submitted that the judge had erred in her determination of the issues.

Held

HELD: The judge had dealt with the case impeccably and in accordance with authority the issues raised by M in her defence. Moreover the judge had applied restrictive conditions on S's return that ensured the protection of both M and S. In an application for summary return where there was a realistic defence under Art.13(b) of the Convention that was only embryonic on the written material, oral evidence was warranted. However in the instant case oral evidence was not required. Any misgivings expressed by the

judge on the operation of the Convention had no validity other than to return to debate issues aired extensively during its implementation and ensuing decades of use. H (Children) (Abduction: Grave Risk), Re (2003) EWCA 355 considered.

Appeal dismissed.

Permission

Lawtel 