

Re C (Abduction: Settlement) Sub Nom in the Matter of Inherent Jurisdiction (2004)

(2005) 1 FLR 127; [2004] EWHC 1245 (Fam)

28/05/2004

Barristers

Henry Setright KC

Court

Family Division

Summary

Where the court was satisfied that a child had settled in its new environment under the Hague Convention on the Civil Aspects of International Child Abduction 1980 Art.12(2), the application fell from the ambit of the Convention entirely and no discretionary power to order the return of the child subsisted.

Facts

The father (F) sought an order for the return of his child (S) pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980. F married the mother (M) in the United States in 1994. F was American and M was Irish. S was born in 1994. The family home was in the US until December 1998 when M kept S in Ireland following a holiday. In July 1999 a consent order for S's return to the US was made. M returned to the US but did not take part in those proceedings and re-abducted S and took her to England. She then assumed names for herself and S, which she obtained from gravestones, in order to escape detection. They were discovered four years later. S was then removed from M into foster care and subsequently reunited with M subject to a variety of conditions. Evidence was given that S was happy with M, her school and environment and that she had little recollection of her life in the US. Issues arose as to the interpretation of Art.12(2) and Art.18 of the Convention, particularly (1) whether, if it was demonstrated that S was now settled in her new environment, the Convention gave rise to a discretion nevertheless to order return; (2) the impact of Art.18; (3) whether it made a difference that S's whereabouts had been actively concealed from F since the wrongful removal of S. F argued that this was an extreme example of deliberate concealment, that S had suffered from the everyday risk of being found and that settlement on such a false basis was not settlement.

Held

HELD: (1) The instant case was at the extreme end of the range of parental determination to sever S's relationship with F. The proceedings were commenced more than a year after the date of wrongful removal as F had been kept in ignorance of S's whereabouts. Therefore Art.12(2) applied. Where the court was satisfied that settlement in the new environment had taken place, then the application fell from the Convention's ambit entirely and no discretionary power to order return subsisted. Concealment

and settlement were not mutually inconsistent concepts. It was not the case that any apparent settlement in a new environment that involved living a lie would not be deemed to be settlement. Each case should be considered in the round and on its own facts without predominant weight being given to any given factor. The chance of future upset in deportation did not undermine the settled nature of the situation. S had lived in M's care for four years in the same city in England and at the same home for the past 38 months. S had not therefore lived a nomadic life. S had attended the same school since she was five years old and had maintained contact with her maternal family. She had not retained meaningful connections with the US. S was settled in her new environment within the meaning of Art.12(2) and on that basis F's application for her return to the US under the Convention failed. (2) Article 18 created no residual jurisdiction to make a return order under the Convention. Its purpose and effect was to make it clear that the Convention in no way limited or precluded the receiving country from ordering return pursuant to its own domestic laws. (3) Deliberate concealment did not stop the year's time running although it might be and often was highly material when the court considered whether settlement was demonstrated.

Permission

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