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Re H (Children) (Abduction: Grave Risk) (2003)

(2003) 2 FLR 141; [2003] EWCA 355

20/03/2003

Barristers
Henry Setright KC
Private: Marcus Scott-Manderson QC

Court
Court of Appeal

Summary
Although a father's Hague Convention appeal to order the return of his children to Belgium had been successful, the children would be subject to the control of the Belgian authorities on their return.

Facts
Appeal by a father from the order of Singer J of 30 January 2003. The mother had removed the children, who had been habitually resident in Belgium, to the United Kingdom without the consent of the father who had rights of custody. On 18 July 2002, the father had begun proceedings under the Hague Convention seeking an order for the return of the children to Belgium. Singer J had held that: (i) the father had dominated the family and had exercised control through the use of violence and threats; (ii) the children had been in an intolerable situation prior to their removal and that returning the children to their father would expose them to a grave risk, that crossed the threshold laid down in Art.13(b) of the Convention; (iii) the Belgium authorities had done little to protect the children; and (iv) the risk of extreme violent behaviour by the father could not be discounted.

Held
HELD: (1) The threshold that had to be crossed when an Art.13(b) defence was raised was a high one and difficult to surmount. Even if the threshold had been crossed there still remained a discretion on the part of the court as to whether to return the child. (2) The father had never been the subject of any injunctive order nor in breach of any court order. The judge had not been entitled to make the findings he had based on contested and untested allegations. (3) The conclusion that the Belgian authorities were indifferent to the plight of the children had not been available on the basis of the evidence before the court. (4) There was no reason to delay the return of the children.

Appeal allowed. Decision concerning Mechanics required for the children's return remitted.

Permission
Lawtel