

Re C (A Minor) (Child Abduction) (1999)

(1999) 2 FLR 478 : Times, May 14, 1999

23/04/1999

Barristers

Henry Setright KC

Court

Court of Appeal

Summary

The goal was to deal with child abduction cases within six weeks from initiation of proceedings to the conclusion of any appeal.

Facts

Appeal of the father from the order of Hogg J made on 19 January 1999 which ordered that the father's originating summons seeking the return to Cyprus of his child ('C'), be dismissed. The parents had been married in England and were both British nationals. The father was also a Cypriot national. C was six and a half years old. There was a half-sister ('H') who was 14 years old. The family's habitual residence was in Cyprus. In June 1998 the mother returned to the UK with C and H. The father instituted proceedings under the Hague Convention 1980 on 15 July 1998 and, following a two-month delay, an originating summons was issued on 9 October 1998. The judge found that H refused to return and that the mother was placed in a position of not being able to return with C unless H accompanied her. She accepted the argument that to return C, thus separating the children who had never been apart, would place C at a "grave risk of psychological harm". The father appealed on the grounds, inter alia, that the problems relating to the mother's non-return related to the position of H who was not herself the subject of the proceedings and whose presence derived entirely from the mother's act of removing the children from Cyprus.

Held

HELD: (1) In Re C (Abduction : Habitual Residence) (1999) Times, February 23, 1999, Ward LJ dealt with the situation where a mother's removal of children from California itself created the grave risk of psychological harm. In N v N (1995) 1 FLR 107, Thorpe LJ had emphasised that an Art.13 defence had to be weighed in the light of the child's history and said that in testing the validity of the defence a judge should ask what were the intolerable features of the child's life before its removal. (2) There was no criticism of the father in respect of his treatment of C and although the position of H was a relevant factor it was not the determinative factor. (3) The present case was a stronger case for the return of the child than Re C (supra) and the judge had erred in giving far too much weight to the positions of the mother and H. (4) The present case had taken far too long to determine and should have resulted in the return of C before the summer holidays in 1998. A straightforward case such as this should have taken

no longer than six weeks from the initiation of proceedings to the determination of any appeal.

Permission

Lawtel 