

Re M (Abduction: Leave to Appeal) (1999)

(1999) 2 FLR 550

30/03/1999

Barristers

Henry Setright KC

Court

Court of Appeal

Summary

Leave to appeal was refused where it was not in the Appeal Court's discretion to question the findings of fact made by the President of the Family Division and that were supported by oral evidence from both parties.

Facts

Renewed application for leave to appeal. The father (F), a South African, applied under the Hague Convention on the Civil Aspects of International Child Abduction 1980 for return of his child, wrongfully removed from South Africa by the English mother, (M). Sir Stephen Brown P, after hearing oral evidence from both parents and a psychiatrist, held that an Art.13(b) defence had been made out, due to the degree of violence she had been subjected to and the particular position of power F held within the relationship, and refused to order return. F sought leave to appeal.

Held

HELD: Had oral evidence not been submitted, the instant case would have been a borderline case wherein a court may reasonably doubt whether or not the child should be returned to the country of his undoubted habitual residence, South Africa. However, oral evidence submitted to Sir Stephen Brown P meant that he had been in a better position than the appellate court to exercise the discretion under the Convention. The President's findings of fact were unlikely to be arguable on appeal. It was to be emphasised that the instant case was procedurally exceptional. It did not show a general departure by the English courts from the spirit of the Convention.

Permission

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