

Re S (Abduction: Return into Care) (1998)

(1999) 1 FLR 843

09/12/1998

Barristers

Henry Setright KC

Court

Family Division

Summary

In considering an application for the return of a child under the Hague Convention it was not open to a court to take into account the welfare considerations in relation to a child whom parents were in dispute. The welfare considerations for the child was specifically and properly a matter for the court at the substantive hearing in the country of habitual residence.

Facts

A mother's application under the Hague Convention on the Civil Aspects of International Child Abduction 1980 for the return of her daughter ('N') to Sweden. N was 9 years old at the time of the instant hearing. N had been born in Sweden and was habitually resident there. The mother and father had divorced in Sweden in 1992 and it had been ordered that N was to reside with her mother. The father resettled in England in 1996 and regularly visited N. In June 1998 with consent of the mother the father brought N to England for a vacation. During that vacation N made a complaint to the father that she had been sexually abused by the mother's cohabitee. The father did not return N and made a residence application. Interim residence and a prohibited steps order, to prevent the mother from removing N from the jurisdiction, were granted to the father in September 1998. The abuse was reported to Camden social services who interviewed N by video and contacted the Swedish social services. The mother denied the allegation and sought N's return. The Swedish social services began to investigate the matter but could not access the situation unless N was returned to Sweden. Assurances were given by the Swedish authorities that on return N would be taken straight to an assessment centre where she would be observed with the mother. N would not be returned to the mother unless the mother agreed to be assessed. It was submitted on behalf of the father that N would be exposed to physical or psychological harm or place in an intolerable situation if she was returned. Further, it was submitted that N did not want to be returned.

Held

HELD: (1) It was clear that the Swedish social services department would eliminate any risk of harm to N. (2) Whilst the instant court took into account N's wishes, under the Hague Convention it was not open to the instant court to take into account the welfare considerations in relation to a child whom parents were in dispute. The whole purpose of the Hague convention was to secure the summary return of children, who have been unlawfully taken or retained out of the jurisdiction of their habitual residence. The welfare

considerations for the child was specifically and properly a matter for the court at the substantive hearing in the country of habitual residence. (3) The matter of complaint arose in Sweden and that was the proper place where the matter should be investigated and weighed. It was not appropriate for the English court to assume jurisdiction in these matters and the child should be returned to Sweden.

Permission

Lawtel 