

Re S (Child Abduction: Acquiescence) (1998)

(1998) 2 FLR 893

21/07/1998

Barristers

Henry Setright KC

Court

Family Division

Summary

The purpose of proceedings under the Hague Convention was to secure the prompt return of a child to the appropriate jurisdiction and not to decide the long-term merits of the custody of the child.

Facts

An application by an American father for the return of his son ('P') to California under the Hague Convention on Civil Aspects of International Child Abduction 1980 as enacted by Sch.1 Child Abduction and Custody Act 1985. P was born in 1994 whilst his mother and father were still living together, although they had subsequently divorced. The mother removed P from America in February 1998, and it was admitted that the removal was unlawful under Art.3 of the Hague Convention. The father engineered her return to the USA in April 1998 on a pretext concerned with finance but she left again with P on 21 April 1998, despite the fact that father had sought a restraining order on that date. On the 24 April 1998 the father obtained an ex parte order from the Los Angeles Superior Court for sole custody and an order for the mother to hand over P. The mother contended that there was wrongful removal in February but after that the father had shown acquiescence, therefore the removal on 21 April 1998 could not have been wrongful. It was also submitted under Art.13(b) that there was a grave risk of physical or psychological harm in returning P as the father had acknowledged violence towards the mother.

Held

HELD: (1) Where a wrongful removal had been admitted it was irrelevant to the outcome of the proceedings which date the wrongful removal had occurred. However, it was found on the evidence before the court that there had been two wrongful removals. (2) The burden of establishing the allegations of acquiescence and risk of harm rested on the mother. (3) The claim of acquiescence could not stand in light of the fact that the father had sought a restraining order on 21 April 1998. The instant case was not one that could fall within the exceptions in Re H (Abduction : Acquiescence) (1998) AC 72. (4) There was no suggestion of a perceived risk to P when the mother had taken P back to America in April 1998. If P was ordered to return to America the mother would accompany him therefore there would have been no risk under Art.13(b). (5) The fact that the father had a sole custody order did not preclude the matter of long-term custody being considered by the Los Angeles court. The purpose of proceedings under the Hague Convention was to secure the prompt return of a child to the appropriate jurisdiction

and not to decide the long-term merits of the custody of the child.

Application granted. Order for child's return.

Permission

Lawtel 