

Re E (Abduction: Intolerable Situation)

2008] EWHC 2112 (Fam); [2009] 2 FLR 485

20/06/2008

Barristers

Henry Setright KC
Private: Marcus Scott-Manderson QC
Private: David Williams QC
Private: Hassan Khan
Rebecca Foulkes

Court

Family Division

Summary

In refusing to order, under the Hague Convention on the Civil Aspects of International Child Abduction 1980, the summary return of an 11-year old child to the United States, the court took account of his objection to a return; his settled life in the United Kingdom with his mother, stepfather and half-sibling; and the fact that his return would break up that family unit.

Facts

The applicant father (F) applied under the Hague Convention on the Civil Aspects of International Child Abduction 1980 and under the Child Abduction and Custody Act 1985 for the summary return of the child (T) to the United States. T was 11 years old and had been born in the United States. After his parents' separation when he was around three he continued to live in the US with his mother (M) until she removed him to the United Kingdom when he was eight. Although F knew of the removal, there was a dispute as to whether he had known it was to be a permanent move. Once in the UK, M settled with a new partner (K), with whom she had a child (N). The family came to the attention of the social services and at the time the instant proceedings were launched it was proposed that a one-year supervision order be made because of concerns about the quality of the children's lives. Although M and T were overstayers and their immigration status was not secure, M's position was that she wished to remain in the UK with her new family. K made it clear that he would neither relocate to the US nor consent to N doing so. M submitted that there was a grave risk that a return to the US would expose T to psychological harm or would place him in an intolerable situation. She asserted that he had become settled in England and objected to a return to the US.

Held

HELD: (1) T's objections were genuine and were to a sufficient extent based on his own views as to the consequences of a return to the US. He had reached an age and degree of maturity at which it was appropriate to take account of his views, M (Children) (Abduction: Rights of Custody), Re (2007) UKHL 55,

(2008) 1 AC 1288 and F (Abduction: Rights of Custody), Re (2008) EWHC 272 (Fam), (2008) Fam 75 followed. (2) T was settled in England within the meaning of art.12 of the Convention. While M had not been as open with F as she should have been, she had not set out deliberately to conceal the presence in the UK of herself and T. They had not gone from place to place as fugitives, but had simply settled with K. The situation was similar to, though less reprehensible than, the mother's behaviour in C (A Child) (Child Abduction: Settlement), Re (2006) EWHC 1229 (Fam), (2006) 2 FLR 797, Re C and Cannon v Cannon (2004) EWCA Civ 1330, (2005) 1 WLR 32 considered. There was powerful evidence from the guardian that T was both physically and emotionally settled in the UK, and that was supported by clear evidence of his very strong attachment to his family in the UK and his integration into life both at home and at school. The fact that concerns remained about his care and that there might be elements in his life that were not settled did not prevent him from being settled for the purposes of art.12 of the Convention. Finally, while his immigration position was not wholly clear, the court was not prepared on the evidence to assume that it his deportation was likely in the near future. (2) There was a grave risk that T would be exposed to psychological harm or would otherwise be placed in an intolerable situation were he to be summarily returned to the US, C (Minors) (Abduction: Grave Risk of Psychological Harm), Re (1999) 1 FLR 1145 CA (Civ Div) and D (A Child) (Abduction: Rights of Custody), Re (2006) UKHL 51, (2007) 1 AC 619 followed. K's refusal to relocate was not unreasonable and if T's return was ordered, M would be forced to choose between her children. If they returned together, M and T would probably be locked in for a significant period of time as a result of UK immigration rules, resulting in a dislocation of their family life. Moreover, the evidence was that T would blame himself for dividing the family. Equally, were he to return alone he would be separated from his English family which, on the evidence, would be devastating for him. (3) T's summary return to the US would be inconsistent with his welfare and would not be ordered. The factors supporting that conclusion were overwhelming. (4) Part of the hearing had been taken up with a consideration of whether F had rights of custody within the meaning of the Convention. Although that issue had eventually been conceded by M, thousands of pounds had been spent on its determination by the English court when the courts in the US were better placed to determine the effect of US state law. The Legal Services Commission had refused to fund representation there and, while it was often the case that the English courts had to make decisions on the effect of foreign laws, it would be better if more effective use could be made of art.15 of the Convention.

Permission

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