

H v (1) M (2) H (A Child by her Guardian Sarah Vivian) (2009)

[2010] 1 FLR 598 : [2010] 2 FCR 433 : [2009] Fam Law 1123 : (2009) 153(37) SJLB 36 : [2009] EWHC 2280 (Fam)

11/09/2009

Barristers

Teertha Gupta KC

Court

Family Division

Practice Areas

International Children Law

Summary

A refusal of a Spanish court which, following a period of delay, issued an order for non-return of a child who was removed from jurisdiction by the mother was difficult to comprehend. The child's father was likely to be granted an order for direct contact with the child if the mother failed to engage in the proceedings and refused to provide information about the welfare of the child.

Facts

The applicant father (F) applied for an order for direct contact with his child (H) and various other orders in respect of parental responsibility and recitals to assist in the implementation of that contact. F was a British national and the mother (M) was a Spanish national. M had travelled to Spain with H for the purposes of a short holiday but later informed F that she did not intend to return to the United Kingdom. F did not give his consent to that retention and initiated proceedings under the Hague Convention on the Civil Aspects of International Child Abduction 1980 in Spain but the Spanish court, after a delay of about 18 months, decided that pursuant to art.13(b) of the Convention it would not order H's return to the UK. Relying on Regulation 1347/2000 art.11(7), F subsequently applied in the UK for an order for H's return. Numerous unsuccessful attempts were made to serve M various documents in relation to the instant proceedings.

Held

HELD: The instant court retained the jurisdiction to make the welfare order requested by F. The key question was whether it was in the best interests of H for contact with F to be resumed. The considerable delay since F last had contact would ordinarily be detrimental to H's welfare and her relationship with F. The refusal of the Spanish courts to order a return to the jurisdiction of habitual residence was difficult to comprehend by reference to Hague Convention principles. F was entitled to invoke art.11(6) and art.11(7) in the UK, A (A Child) (Custody Decision after Maltese Non-Return Order: Brussels II Revised), Re

(2006) EWHC 3397 (Fam), (2007) 1 FLR 1923, HA v MB (Brussels II Revised: Article 11(7) Application) (2007) EWHC 2016 (Fam), (2008) 1 FLR 289, ML and AL (Children) (Contact Order: Brussels II Regulation), Re (No2) (2006) EWHC 3631 (Fam), (2007) 1 FCR 496 applied, and RD (Child Abduction) (Brussels II Revised: Articles 11(7) and 19), Re (2009) 1 FLR 586 Fam Div and RC (Child Abduction) (Brussels II Revised: Article 11(7)), Re (2009) 1 FLR 574 Fam Div considered. F had used every known method to serve M and to try and engage her in the instant proceedings. There was no welfare determination of a Spanish or UK court concerning H. Having regard to general principles regarding the exercise of parental responsibility and the upbringing of children by separated parents, absent any adverse welfare information, the UK courts would seek to facilitate shared residence arrangements or direct and meaningful contact for the absent parent and the child. There was no adverse information about F so the instant court was likely to make an order for direct contact unless M engaged in the process and provided information about H's welfare.

Permission

Lawtel