

W v F (2007)

[2007] EWHC 779 (Fam)

04/04/2007

Barristers

Mark Jarman KC

Court

Family Division

Summary

A period of seven or eights days was not, in the circumstances, an appreciable period of time to establish a child's habitual residence in the United States for the purpose of the Hague Convention on the Civil Aspects of International Child Abduction 1980.

Facts

The applicant father (W) applied for the summary return of his son (S) to the jurisdiction of the courts of the United States pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980. W, a US national, had married the respondent (F), a United Kingdom national. Initially they lived in England, but about seven years after S's birth W moved to the US and a month later F and S joined him. The relationship came to an end about eight days later, and F subsequently returned to the UK with S. W contended that he had consented to F leaving with S on the basis that she would return to the US few months later, and that she unlawfully retained S when she did not do so. F contended that a period of about eight days was not an appreciable period of time to establish habitual residence for the purpose of Art.4 of the Convention and that, in any event, W had agreed to her leaving the US permanently with S.

Held

HELD: (1) A period of seven or eights days was not an appreciable period of time to establish habitual residence. The period of time was by itself too short. Further, whilst F had had a settled intention to remain in the US with W and S when she had arrived there, that had evaporated within a day or two. S's habitual residence was dependent on F's, and her new residence in the US had not become either settled or habitual, *M (Minors) (Residence Order: Jurisdiction)*, Re (1993) 1 FLR 495 CA (Civ Div), *F (A Minor) (Child Abduction)*, Re (1992) 1 FLR 548 CA (Civ Div) and *Nessa v Chief Adjudication Officer* (1999) 1 WLR 1937 HL considered. Accordingly, S was not habitually resident in the US for the purpose of Art.4 of the Convention. (2) Even if S's habitual residence in the US was established, W had consented to S permanently leaving the US. The court exercised its discretion under Art.13 of the Convention in favour of S remaining in the UK.

Permission

Lawtel 