

K v K (2009)

**[2010] 1 FLR 1295 : [2010] Fam Law 8 : [2009] EWHC 2721
(Fam)**

30/10/2009

Barristers

Teertha Gupta QC

Court

Family Division

Practice Areas

International Children Law

Summary

The court exercised its discretion not to order pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980 the return to Ireland of two children where the father of the children had initially consented to the removal of the children and his later change of mind did not invalidate his consent.

Facts

The applicant father (F) applied for the return of his children from the United Kingdom to Ireland pursuant to the Hague Convention on the Civil Aspects of International Child Abduction 1980. F and the respondent mother (M) were Polish nationals, who had married in Poland and both of their children had been born there. After the birth of their first child F had left Poland to work in Ireland. M followed F to Ireland after the birth of their second child and the parties and their children became habitually resident there. The relationship between the parties deteriorated and for a period moved into separate accommodation. F returned with the children to Poland and M contacted the Irish authorities about P's removal of the children from Ireland and commenced Convention proceedings. However, before those proceedings progressed M went to Poland and the entire family returned to Ireland. Thereafter, M and the children went to live in the UK with M's mother. M obtained employment in the UK and the children attended school there. M and the children later returned to Ireland where they stayed for a period of some two-and-a-half-months before M again removed them to the UK. F contended that M had removed the children from Ireland without his consent. M contended that F had initially consented to the removal of the children from Ireland to live with her in the UK and that the last visit by the children to Ireland had simply been for a holiday.

Held

HELD: On the evidence it was clear that, firstly, when F had removed the children from Ireland to Poland he had done so without M's consent; secondly, that F had consented to M removing the children from Ireland to live with her in the UK; and, thirdly, that M's subsequent return to Ireland with the children was

for a holiday. A change of mind by F after M had left Ireland to live with the children in the UK did not invalidate his earlier consent, K (Abduction: Consent), Re (1997) 2 FLR 212 Fam Div applied. Further, under the Hague Convention, where a parent returned with children for the purpose of an agreed holiday to the country from which they were removed after a consensual departure, that did not by itself bring the earlier consent to an end. Whilst the consent might come to an end for other reasons, that termination would need a clear indication from M, for example by her saying that she was no longer relying on F's earlier consent, or that her return was permanent. It could equally occur if M's actions were incompatible with any other interpretation. In the instant case nothing had occurred to show that M had ceased to rely on F's initial consent and accordingly that consent was still operative when M and the children returned to Ireland for the holiday. When regard was had to F's abduction of the children to Poland without seeking M's consent, F's initial consent to the removal of the children and the fact that the children were settled in the UK, it was inappropriate for the court to exercise its discretion so as to order the children to be returned to Ireland, M (Children) (Abduction: Rights of Custody), Re (2007) UKHL 55, (2008) 1 AC 1288 applied.

Permission

Lawtel 