

Re H (Abduction) [2009]

[2009] 2 FLR 1513; [2009] EWHC 1735 (Fam)

11/02/2009

Barristers

Teertha Gupta KC
Mark Jarman KC
Ruth Kirby KC

Court

Family Division

Summary

Where there was a grave risk of suicide and serious psychological and emotional damage to two children if summarily returned to their father in Spain, notwithstanding that they had lived there for 10 years, that was sufficient to establish the very high hurdle of the harm defence under the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.13(b).

Facts

The applicant father (F) applied for the summary return of his two children in accordance with the Hague Convention on the Civil Aspects of International Child Abduction 1980. F and his former wife, the respondent (M) had moved to Spain together with their two children (X and Y) when X was aged three years and Y was four months old. Some years later, M made allegations of domestic violence against F and, following a court hearing in Spain, F was enjoined from visiting the family home. M and F were subsequently divorced. M was granted custody of the children and F was granted limited contact. M then returned to the United Kingdom with the children, ostensibly for a holiday, but refused to return to Spain. There was evidence that X, who was aged 14 at the time of the instant hearing, was a very troubled adolescent: she had been engaged in a sexual relationship with an older boy, had attempted suicide by taking a drug overdose and was, by all accounts, beyond control. According to her guardian ad litem she had threatened to commit suicide if ordered to return to Spain, but she had given conflicting evidence and had apparently written a letter to F's Spanish lawyer indicating her wish to return to Spain. Y had stated that he was frightened of F and had shown marked emotional improvement since his return to the UK. he had an active social life in the UK and was doing well at school, but had been bullied in Spain. M argued that, in accordance with art.13(b) of the Convention, there would be a grave risk of harm to the children if they were ordered to return to Spain.

Held

(1) Both X and Y harboured a genuine and profound objection to returning to Spain. There was a very high hurdle which had to be traversed to establish the harm defence under art.13(b) of the Convention. However, in the circumstances of the instant case, the evidence was wholly persuasive that there was a

grave risk of harm to both X and Y. There was a real risk that X would attempt suicide if ordered to return to Spain, given her previous suicide attempt. Were Y to be returned to Spain, there was a grave risk that irreparable damage would be caused to his relationship with both M and F and to his psychological and emotional development. It was also appropriate that Y should remain with X in order to preserve the close relationship between the brother and sister. Y regarded F with genuine and profound fear, and his return to Spain would destroy any remaining hope of repairing that relationship, *TB v JB (formerly JH) (Abduction: Grave Risk of Harm) (2001) 2 FLR 515 CA (Civ Div)* and *M (Children) (Abduction: Rights of Custody), Re (2007) UKHL 55, (2008) 1 AC 1288*, applied. (2) The reluctance of the local authority to engage with the family was entirely misplaced and the threshold for the purposes of the Children Act 1989 s.38 had been crossed. It was appropriate to make an interim supervision order in respect of both X and Y and direct the local authority to prepare a full report under s.37 of the Act. Pursuant to Regulation 2201/2003 art.15, the Spanish court was invited to transfer any private law proceedings extant in that country so that all the issues could be considered together.

Permission

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