

# Re A (Custody Decision after Maltese Non-Return Order) (2006)

**[2006] EWHC 3397 (Fam); (2007) 1 FLR 1923**

29/11/2006

## **Barristers**

Robin Barda

## **Court**

Family Division

## **Summary**

It was appropriate to make an order under Regulation 2201/2003 that a 12-year-old boy should return to England to live with his mother and to thereby overturn an order of a Maltese court declining to order his return.

## **Facts**

The applicant mother (M) applied, under Regulation 2201/2003, to have reviewed an order of a Maltese court declining to return to England her 12-year-old son (S) and for an order that S be returned to England forthwith. M and S's father (F) had married in England in 1986. A year later, they moved to Malta, F's native country. In 2000, the family moved to England. F could not settle in the UK and returned to Malta in 2001. S's siblings, who were aged 19 and 17, had also returned to Malta. S had recently gone on holiday to stay with F in Malta but had not returned. It appeared that he was being looked after by his siblings. M issued an application under the Hague Convention on the Civil Aspects of International Child Abduction seeking an order for S's return. Although the magistrate in Malta found that the conditions for the making of such an order had been made out, he found that S's return would expose him to physical and psychological harm and place him in an intolerable situation as contemplated by Art.13(b) of the Convention. The harm identified was that he would turn out like his elder brother, who had resorted to drug use while in England. The magistrate also took into account S's "outright refusal to return to England".

## **Held**

HELD: It would be appropriate to accede to M's application and to order that S should be a ward of the court during his minority. F had been given every opportunity to participate on his own behalf in the instant proceedings and to facilitate communication between S and the guardian, whom the court had decided to bring in to ascertain S's views, but had chosen not to take those opportunities. If the court had to choose which parent was more likely to foster the maintenance of a proper and affectionate relationship with the other parent, it would back M rather than F. The guardian had stated that her limited investigations had not revealed any independent professional concerns that M had failed to meet S's emotional, physical or educational needs while he was living with her, or that he would be at risk of

significant harm if he returned to her care. M, who had impressed the court, and her current partner were a good partnership in terms of their ability to care for, and impose discipline on, S. Further, M had supportive family members living nearby. In addition, the court was unpersuaded about S's supposed unwillingness to return home.

## Permission

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