

Re D (A Child) (2006)

[2006] EWCA Civ 830

25/05/2006

Barristers

Henry Setright KC

Private: Marcus Scott-Manderson QC

Court

Civil Division

Summary

In a case involving Romanian parents whose divorce and child-related proceedings were being conducted by the Romanian courts, and where the mother had wrongfully removed their child to England, the judge was entitled to conclude on the evidence that the rights enjoyed by the father in his homeland went well beyond rights of access and amounted to rights of custody autonomous with the law of the Hague Convention on the Civil Aspects of International Child Abduction 1980.

Facts

The appellant mother (M) appealed against the decision that the respondent father (F) had rights of custody and that their son (B) should be returned to Romania. Following F's and M's divorce in Romania M had removed B to England. As Romania was a signatory to the Hague Convention on the Civil Aspects of International Child Abduction 1980, F made an application for B's return. The matter was adjourned as the judge was unable to resolve the conflict of evidence between the respective parental rights and a declaration, as to F's rights, was sought under Art.15 of the Convention from the Romanian courts. The matter was finally resolved with the Romanian courts declaring F had rights of access. F applied for an expert on Romanian law to be instructed. M contended that the lapse of time, of over three years, meant there was a risk of harm to B if his return to Romania was ordered. On the basis of the translation of the Romanian judgment the judge concluded that the rights F enjoyed went far beyond mere rights of access and amounted to rights of custody within the autonomous meaning of the Convention. He ordered that B be returned to Romania. The Romanian courts subsequently granted temporary leave for B to remain in England until the end of the current school term.

Held

HELD: (1) The judge had been fully entitled to conclude that the rights enjoyed by F in his homeland went well beyond mere rights of access and amounted to rights of custody autonomous with the law of the Convention. The fact that M had engaged the Romanian courts the day after the judgment in the family division of the English courts was fatal to her argument that the lapse of time required the instant court to make welfare considerations. That was impossible when it was the Romanian courts dealing with that issue. (2) (Per curiam) The instant case magnified the misgivings as to the utility of the Art.15 procedure.

An obligation on a requested state to ensure expeditious determination of an application was not relieved or even temporarily postponed by the delay in the return of an Art.15 request precisely because the response was not determinative. If a judge in a requested state saw that he was not getting the answers he required it was his duty to proceed to decide custody issues applying the autonomous law of the Convention. The value and importance of the appointment of liaison judges in all countries that used the Convention should be stressed.

Permission

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