

Re S (A Minor) (Child Abduction: Delay : Child's Preference) (1997)

(1998) 1 FLR 651 : Times, November 20, 1997

16/10/1997

Barristers

Henry Setright KC

Court

Family Division

Summary

Child's preference to stay with abducting parent allows court to exercise its discretion as to delay by the other parent.

Facts

Father's application for summary return of an abducted child to Germany under Arts 3 and 12 of the Hague Convention on the Civil Aspects of Child Abduction (1980) reproduced in Sch.1 of the Child Abduction and Custody Act 1985. The child had been born in Germany in 1986. In May 1996 the mother had returned with the child to England intending to settle permanently. They returned to Germany for a visit in September 1996 and the father was awarded custody by the German court in October 1996 but did not start proceedings under Art.3 of the Convention until June 1997.

Held

Wrongful removal was not a continuing state of affairs affecting the child's status irrespective of what happened subsequently. There had been two separate wrongful removals of the child and the Art.12 exception giving the court a discretion did not apply. However as the child did not wish to return to her father and was of a sufficient age and maturity for her wishes to be taken into account, this opened the door to discretion under Art.13 (see *In re S (a minor) (Abduction: Custody Rights)* (1993) FAM 242). The father's unexplained delay in seeking the immediate return of the child could be taken into account.

Permission

Lawtel 