

Re S (Abduction: Children: Separate Representation) (1996)

(1997) 1 FLR 486

13/03/1996

Barristers

Henry Setright KC

Court

Family Division

Summary

Whether exceptional circumstances existed making it appropriate for children to be joined as parties and separately represented in Hague Convention proceedings.

Facts

Application pending Hague Convention proceedings by the parties' two children to be joined to the proceedings and have separate representation. The parties were married in England in 1981 and moved to New Zealand. The children were born in New Zealand in 1982 and 1984. The marriage broke down in 1985 and the mother abducted the children to the UK. The children were returned to New Zealand by court order. An order was made in 1993 preventing the removal of the children from the New Zealand jurisdiction. The mother was granted custody of the children in 1994 with interim access to the father. The mother applied to remove the children to England. The application was refused and the children were made wards of court and placed in the care of foster-parents. In 1996 the mother removed the children to England.

Held

HELD: (1) The unusual feature of the case was that if the Convention was applied by the court the children would return not to the care of their father but to the care of the High Court of New Zealand. There would be no immediate prospect of face-to-face contact with the father. (2) A finding that a child did not wish to be returned was not determinative of the exercise of the discretion under Art 13(b) Hague Convention 1980. The weight to be attached to the objections of a child varied with age and maturity. The maturity of the child should be ascertained by the court welfare officer. (3) For a child to require separate representation there must be exceptional circumstances. Representation by the mother was deemed inappropriate since she was in breach of the High Court of New Zealand and was found to have exercised undue influence over the children. (4) The children needed to have freedom to take independent advice and put forward views which might be critical or contradictory of the mother's views. Application allowed.

Permission

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