

Re A (Minors) (Child Abduction) (1995)

**(1996) 1 WLR 25 : (1996) 1 All ER 24 : (1996) 1 FLR 1 :
Independent, October 16, 1995**

31/07/1995

Barristers

Henry Setright KC

Court

Family Division

Summary

Residence of children abducted from father who was serving in the US armed forces in a non-convention country.

Facts

Application by American father for the return of his three children respectively aged 6, 5 and 1 abducted by the mother from a US Naval Base in Iceland, a non-convention country where the family had been living.

Held

The habitual residence of the children was not the USA but the country in which they had been living irrespective of the fact that their father was serving in the US forces there. The Court was accordingly satisfied that the children were habitually resident in Iceland, a non-Convention country so it was not open to the court to make any order under the Hague Convention on the Civil Aspects of International Child Abduction and the Child Abduction and Custody Act 1985 for the return of the children.

Furthermore the children had been in this country since 3/4/95 and have been in school. A move to the USA for the purposes of a hearing would create complications and almost certainly mean that the mother, who is pregnant, would have to give birth to her child there. There has been no criticisms of the mother by the father and no suggestion they should be separated. A double move would be highly disruptive for them. The court did not consider a move would be in the best interests of the children. In declining to make any order the court wished to make it clear it was not seeking in any way to prejudge the final determination of the pending divorce and custody proceedings. Application dismissed.

Permission

Lawtel 