

Re S (Abduction: European Convention) (1995)

(1996) 1 FLR 662

25/05/1995

Barristers

Henry Setright KC

Court

Family Division

Summary

Whether mother required notice of an application which lead to the making of an ex parte order and whether the removal was unlawful.

Facts

Unmarried father, without parental responsibility, instituted and served Children Act proceedings on the mother, who then removed the child to Denmark. Ex parte interim order then granted to the father, who applied for a declaration that the removal was unlawful.

Held

(a) Art.12 of the European Convention states that its provisions will apply to custody decisions, even those subsequent to the child's removal, and declarations that the removal of the child was unlawful. (b) Art.9(1)(a) can refuse recognition and enforcement of custody decisions if they are not served on the defendant in time. The mother was given notice of the substantive Children Act proceedings, and as the father and the child were habitually resident in England, it was not necessary to serve the mother with notice of the ex parte application under Art.9(1)(b). (c) As the removal was without the father's consent and as he later acquired rights in relation to the child, the removal was unlawful under s.23 (2) of the Child Abduction and Custody Act 1985.

Permission

Lawtel 