

Re (1) H (2) L (Children) subnom AI v (1) N (2) H & L (Children) By Their Guardian Joyce Lubell) (2010)

AC0124018

27/02/2010

Court

Family Division

Practice Areas

International Children Law

Summary

The court determined that two children were settled in the United Kingdom for the purposes of their father's request for their summary return to Italy under the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.12. The settled aspects of their environment encompassed place, home, school, people, friends, activities and opportunities and there were no meaningful links to Italy.

Facts

The applicant father (F) applied for the summary return to Italy of his two children (H and L) who had been removed to the United Kingdom by the respondent mother (M). H and L had been born in Italy in 2000 and 2002 respectively. In 2003, M brought both children to live in the UK. Thereafter, the children attended schools in the UK. The children spoke fluent English but little or no Italian. F visited the children in the UK some two to three times a year but his married relationship with M deteriorated. In 2007, M and both children were granted exceptional leave to remain in the UK on an indefinite basis. In 2008, M and the children moved to a different area in the UK. It was the children's guardian's opinion that the children were now settled in the UK. F submitted, amongst other things, that (1) firstly, the children's stability was associated with M and not with their environment; secondly, that the absence of any meaningful links with Italy did not, of itself, constitute evidence of settlement; and, thirdly, that, as a result of their move in 2008, the court should focus on the children's circumstances as of that date; (2) he had only agreed to their coming to the UK for a six-month period in order to study English; (3) it would be wrong in law to make a finding that the children were habitually resident in England if a Hague Convention defence had been established as it would involve the court having to make a finding of wrongful removal or retention pursuant to art.3.

Held

HELD: (1) In light of credibility issues surrounding the evidence of both parents, the evidence of the guardian in relation to the issues was of central and decisive importance. Firstly, it was apparent that the children had physical, emotional and psychological stability and security that was anything but transient and was likely to continue into the future. The settled aspects of their environment encompassed place,

home, school, people, friends, activities and opportunities, *N (Minors) (Child Abduction), Re* (1991) 1 FLR 413 Fam Div applied. It followed that the children's stability was not merely associated with their relationship with their mother. Secondly, the absence of any meaningful links with Italy was highly significant because it showed that the children's life in their new environment was subject to no competition. Thirdly, the term "new environment" in the Hague Convention on the Civil Aspects of International Child Abduction 1980 art.12 referred to the total physical, social, emotional and psychological experience of the children which, in the instant case, was not significantly affected by their move, in 2008, to a different part of the UK. Finally, the children's immigration status was immaterial to the issue of settlement. They had indefinite leave to remain and there was no reason to expect that that would be disturbed. (2) Applying the principles enunciated in *H v H (Child Abduction: Acquiescence)* (1998) AC 72 HL, M was entitled to the dismissal of F's summons on the basis of his own case having plainly agreed to allow M and the children to come to the UK for a period of six months, *H v H* applied. In any event, F's account of M and the children coming to the UK was extraordinarily improbable. Moreover, F took no positive steps to secure the children's return until 2009. It was his state of mind to accept that the children were in Britain and that they were not going to return to Italy. It was a plain case of acquiescence and, given the exceptional lengths of time involved, might even fall within the exception expressed in *Re H*: that where the words or actions of the "wronged" parent clearly and unequivocally showed or led the other parent to believe that the wronged parent was not asserting or going to assert his right to the summary return of the child, justice required that the wronged parent be held to have acquiesced, *Re H* applied. (3) In commonsense terms, F's case that the children remained habitually resident in Italy appeared to be so far-fetched that it could only be established by the most recondite legal argument based on highly uncertain facts and a detailed analysis of the effect of the breaches of immigration control on habitual residence.

Permission

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