

W (Minors) [2010]

**[2010] 2 FLR 1165 : [2010] Fam Law 787 : [2010] EWCA 520
Civ**

12/05/2010

Barristers

Henry Setright KC

Court

Civil Division

Practice Areas

International Children Law

Summary

Application for permission to appeal against a refusal to return children to the Republic of Ireland under the Child Abduction and Custody Act 1985. Application refused.

Facts

The mother was English and the father Irish. They married in October 2007 after cohabiting for several years. The children were D, aged 8, G 6, and C 3 years old. Until June 2009 the family lived in the Republic of Ireland and it was common ground that they were habitually resident there. On June 19 the mother left for England with the children and it was accepted that they had been wrongfully removed. The father followed them to England, living with his mother in law and finally moving back in with the mother and children. That reconciliation did not last with further accusations of drink problems and violence, so the father returned to Ireland and, upon finding out of his rights under the Convention, issued an application for the children's return to the Republic. That application was refused by Black J: see *W v W* [2010] EWHC 332 (Fam).

The father applied for permission to appeal on three grounds: i) a defence based on a child's objections could not, or should not, apply to a child as young as G, ie a six year old; ii) the objections of D and G were not to return to the Republic of Ireland but to a home in Ireland in which the father would be present; iii) the evidence before the judge was too thin to enable her to find that D and G had attained an age and, in particular, a degree of maturity at which it was appropriate to take account of their views; iv) when the judge exercised the discretionary exercise mandated by Article 13, she failed to refer to various relevant factors, including the ages and degree of maturity of the two older children, the confidence which she should reasonably repose in the Irish courts to make decisions which would serve their welfare, the undertakings offered by the father to ensure a peaceful life for the family in Ireland, separate from him, and the likely negative impact of a refusal to order their return upon his relationship with them; and v) in conducting that same discretionary exercise, the judge had attributed insufficient weight to certain factors and had attributed excessive weight to others.

Held

Wilson LJ, in his judgment, rejects each of the father's grounds of appeal, stating: i) in recent years the need to take decisions about much younger children not necessarily in accordance with their wishes but at any rate in the light of their wishes has taken hold: see Art 12 of the U.N. Convention on the Rights of the Child 1989, Art 13 of the Hague Convention by Art 11(2) of Council Regulation (EC) No 2201/2003 (Brussels II Revised) and Baroness Hale's observation in *In re D (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, [2007] 1 AC 619, at [59], that "children should be heard far more frequently in Hague Convention cases than has been the practice hitherto" related to the defence of a child's objections; ii) whilst the older children were able to articulate the distinction between life in Ireland and life with their father, they nevertheless objected to the former; iii) it was open to the judge on the evidence to conclude that D and G's degree of maturity, along with their ages, made it appropriate for her to take their views into account; iv) the judge had referred to all these factors within her judgment; and v) it is of the essence of judicial discretion that the exercise of attributing weight is committed to the judge.

Permission

Family Law Week 