

Re A (Children) (Abduction: Interim Powers) sub nom EA v (1) GA (2) Westminster City Council (3) Salford City Council (2010)

[2011] 1 FLR 1; [2010] EWCA Civ 586; Times, June 16, 2010

27/05/2010

Barristers

Henry Setright KC
Deirdre Fottrell KC
Private: David Williams QC

Court

Court of Appeal

Practice Areas

International Children Law

Summary

The Child Abduction and Custody Act 1985 s.5 permitted a court to order a local authority to provide accommodation. Guidance was given as to the procedures to be adopted when applying for such an order and resolving disputes as to which local authority should bear the cost of providing the accommodation.

Facts

The appellant mother (M) appealed against a decision that she and her two children who she had allegedly abducted were not entitled to be provided with local authority accommodation under the Child Abduction and Custody Act 1985 s.5 pending a determination of proceedings concerning their return brought against her by the first respondent father (F). M and F's children had been born in the Republic of Ireland. One of the children (K) was disabled and, by the date of the instant hearing, had been assessed as autistic. M had taken the children to England, at different times to the two areas of the second and third respondent local authorities. F had sought a return order under the Hague Convention on the Civil Aspects of International Child Abduction 1980. Pursuant to s.5 of the 1985 Act, one of the local authorities was ordered to provide M and the children with accommodation until disposal of the matter or further directions. A dispute subsequently arose as to which local authority should pay for such accommodation. At a later hearing the issue arose as to whether the court's power under s.5 extended to directing a local authority to provide accommodation for the abductor and abducted children. It was found that the local authority should not be ordered to house the family and the accommodation order was discharged. The local authorities submitted that s.5 did not in any circumstances extend to the provision of accommodation.

Held

HELD: (1) Section 5 of the 1985 Act did permit a court to order a local authority to provide accommodation. The essential mechanism for the operation of the Convention internationally was the creation of a central authority in all participating jurisdictions. However, jurisdiction was only conferred by domestic statutory provisions and not by the Convention itself. Enabling the central authority to discharge its responsibilities defined by art.7(b) of the Convention, it was necessary to create a matching judicial power. The power conferred by s.5 of the Act was more extensive than the definition of the duty of the central authority defined by art.7(b). The language of s.5 of the Act and the construction of that language needed to be extensive to achieve the objectives of the Convention and to safeguard the welfare of children whose vulnerability was generally magnified by the effects of abduction. The commonest risk against which children had to be protected was the risk of further flight. Child protection was part of safeguarding the welfare of the child. The latter was a wider concept than the former. The child might have welfare needs unrelated to the risk of another upheaval. In the instant case K had special needs and his welfare could only be secured by meeting those needs. Pending the trial of the application he had to have a roof over his head. He should not be separated from M who he needed as much as he needed good lodging. The judge's construction shackled the court from safeguarding the abducted and from fulfilling the objectives of the Convention and meeting the obligations assumed on ratification. Sufficient powers were not to be found in general legislation. An accommodation order was justified to prevent a further abduction, to promote the efficient preparation of an abductor's defence to a return application and to promote the welfare of an abducted child, particularly if the child had special needs. (2) (Per curiam) An application for an accommodation order under s.5 of the Act should be on notice, particularly to the local authority against whom the order was sought, and should be supported by evidence. Disputes between local authorities as to which should bear the burden of accommodation were discouraged. As a generality the burden fell upon the local authority within whose area the abductor was present at the date of making the order. If a dispute arose on the facts of a particular case, the choice of which local authority was to accommodate had to be made in the exercise of judicial discretion, having regard to the welfare of the abducted child and within the context of the Convention proceedings. Domestic statutory provisions designed to deal with a transition from one local authority to another were not engaged.

Permission

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